

## 09hr\_JCR-AR\_Misc\_pt34



Details: Emergency Rules by Department of Children and Families.  
(FORM UPDATED: 08/11/2010)

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

## 2009-10

(session year)

## Joint

(Assembly, Senate or Joint)

## Committee for Review of Administrative Rules ...

### COMMITTEE NOTICES ...

- Committee Reports ... **CR**
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### 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**

\* Contents organized for archiving by: Stefanie Rose (LRB) (June 2012)



Effective  
June 1

State of Wisconsin  
Department of Children and Families

**EMERGENCY RULE**

**Wisconsin Works and Wisconsin Shares  
Disregard of Temporary Census Income**

**DCF 101 and 201**

The Wisconsin Department of Children and Families orders the amendment of DCF 101.09(3)(b) and the creation of DCF 101.09(3)(b)1.b., 101.26(3), and 201.08(2)(g), relating to Wisconsin Works and Wisconsin Shares disregard of temporary census income.

**Finding of Emergency**

The Department of Children and Families 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:

Disregarding income earned from temporary employment with the U.S. Census Bureau in determining Wisconsin Works and Wisconsin Shares eligibility and child care copayments is necessary for the public welfare to ensure Wisconsin has a broad pool of available workers to help ensure an accurate Census count, particularly in historically undercounted low-income neighborhoods. Census work is currently ongoing.

**Analysis Prepared by the Department of Children and Families**

**Statutory authority:** Sections 49.145 (1), 49.155 (1m), and 227.11 (2) (a), Stats.

**Statutes interpreted:** Sections 49.145 (1) and (3) and 49.155 (1m), Stats.

**Related statutes or rules:** NA

**Explanation of agency authority**

Section 49.145 (1) provides that to be eligible for Wisconsin Works (W-2) employment positions and job access loans for any month, an individual shall meet the financial eligibility requirements in sub. (3). The Department may promulgate rules establishing additional eligibility criteria and specifying how eligibility criteria are to be administered.

Section 49.155 (1m) (c) 1., Stats., provides that in determining financial eligibility for the child care subsidy, the W-2 agency shall calculate the gross income of the family as described in s. 49.145 (3) (b), Stats., for W-2 employment positions and job access loans. An individual shall also satisfy other eligibility criteria established by the department by rule under par. (d).

### **Summary of the rule**

The rule excludes income earned from temporary employment with the U.S. Census Bureau in determining W-2 and child care eligibility and child care copayments. This exclusion applies for up to 12 weeks per year. A W-2 participant who is working for the Census fewer than 30 hour per week may be placed in a pro-rated Community Service Job with hours of Census employment treated the same as hours of other unsubsidized employment in determining participation requirements and payment amounts. Disregarding Census earnings will reduce, but not eliminate, family child care copayment responsibility. In general, a copayment is required from families receiving a child care subsidy under federal law. A family with only Census income will be required to pay a copayment at the lowest level.

### **Summary of factual data and analytical methodologies**

In 2009 and 2010, the U.S. Census Bureau will be recruiting and temporarily employing more than 700,000 people to fill paid, part-time positions to conduct the 2010 census. In 1999 and 2000, the Census Bureau successfully recruited Temporary Assistance for Needy Families (TANF) participants to help fill vacancies and wishes to do the same for the 2010 census.

The Department of Health and Human Service, Administration for Children and Families, encourages states to disregard the income that TANF participants receive as census employees. This will mean that temporary income from census employment will not result in TANF participants losing financial assistance without gaining long-term employment.

Encouraging W-2 participants to work for the Census Bureau by ensuring that benefits will not be lost is critical to the Census Bureau's work. It is important to the Census to employ workers from neighborhoods that have historically been undercounted. W-2 participants can play vital roles in establishing an accurate count, which affects Wisconsin's congressional representation and federal funding distribution.

Census work can help the State meet the required TANF work-participation rate when the W-2 participant is receiving a pro-rata W-2 grant. Disregarding income will avoid confusion resulting from temporary, intermittent employment with varying weekly earnings. In addition, Census jobs will provide W-2 participants with training and work experience while they perform a valuable community service. Children of Census workers will benefit from being in a licensed or certified child care center while their parents are employed.

Most temporary workers will be employed as enumerators in the field for about 4 to 8 weeks. Nationally, about 100,000 people will be employed in 2009 to locate and verify addresses and about 600,000 people will be employed in 2010 for non-response follow-up. Up to 3,500 positions are targeted for Wisconsin in 2009 and 17,400 in 2010.

Thirty-three other states have approved or indicated pending approval of policies allowing disregard of census income in determining TANF eligibility.

### **Summary of related federal requirements**

In general, a copayment is required from families receiving a child care subsidy.

### **Comparison with rules in adjacent states**

All adjacent states have approved or indicated pending approval of TANF guidelines allowing temporary census employees to maintain TANF eligibility.

### **Agency contact persons**

For Wisconsin Works, the agency contact is Rose Prochazka, (608) 267-7398, [rose.prochazka@wisconsin.gov](mailto:rose.prochazka@wisconsin.gov). For Wisconsin Shares child care assistance, the agency contact is Sue Mathison, (608) 266-8872, [susan.mathison@wisconsin.gov](mailto:susan.mathison@wisconsin.gov).

**SECTION 1. DCF 101.09 (3) (b) 1. is amended to read:**

**DCF 101.09 (3) (b) *Income limitations.*** 1. The individual is a member of a W-2 group whose gross income is at or below 115% of the poverty line. In this subdivision, "gross income" does not include any payments of the following:

a. Payments or benefits made under any federal law that specifically exempts such payments or benefits from being considered in determining eligibility for any federal means-tested program.

**SECTION 2. DCF 101.09 (3) (b)1. b. is created to read:**

**DCF 101.09 (3) (b) 1. b.** Income earned from employment with the United States Census Bureau that does not exceed 12 weeks per year.

**SECTION 3. DCF 101.26 (3) is created to read:**

**DCF 101.26 (3)** Income earned from employment with the United States Census Bureau that does not exceed 12 weeks per year shall not be considered as family income in determining financial eligibility for a child care subsidy under s. 49.155 (1m) (c), Stats.

**SECTION 4. DCF 201.08 (2) (g) is created to read:**

**DCF 201.08 (2) (g)** Income earned from employment with the United States Census Bureau that does not exceed 12 weeks per year shall not be considered as family income in determining the amount of a parental copayment under sub. (1).

**SECTION 5. EFFECTIVE DATE.** This rule shall take effect on June 1, 2009, as provided in s. 227.24 (1) (c), Stats.

FISCAL ESTIMATE  
DOA-2048 N(R03/97)

- ORIGINAL       UPDATED  
 CORRECTED       SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.  
DCF 101 and 201

Amendment No. if Applicable

**Subject**  
Wisconsin Works and Wisconsin Shares Disregard of Temporary Census Income

**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**

**Assumptions Used in Arriving at Fiscal Estimate**

The number of federal Census positions targeted for Wisconsin will be up to 3,500 in 2009 and 17,400 in 2010. The majority of these positions will be field operation workers with wages ranging from \$11.75 to \$15 per hour in 2009 and \$13.75 to \$17.75 in 2010. The hours for the positions are projected to be from 5 to 25 per week, with each position lasting 4 to 8 weeks. The fiscal impact of disregarding earnings on the Wisconsin Shares child care assistance program is minimal because even the highest paid temporary Census position will calculate to be below the eligibility level of 185% of the federal poverty level. Disregarding Census earnings will reduce, but not eliminate, family copayment responsibility. In general, federal law requires that families pay a copayment. A family with only Census income will be required to pay a copayment at the lowest level. The projected amount of copayment reduction will be approximately \$16,600 in 2009 and \$42,200 in 2010 for a \$10 per week, two-child family model for 3,310 children in 2009 and 11,036 in 2010 for 6 weeks of part-time child care.

**Long-Range Fiscal Implications**

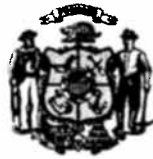
None

Agency/Prepared by: (Name & Phone No.)  
DCF/Susan Mathison (608) 266-8872

Authorized Signature/Telephone No.

Date





**State of Wisconsin  
Department of Children and Families**

**EMERGENCY RULE**

**Emergency Assistance for Needy Families**

**DCF 120**

The Wisconsin Department of Children and Families orders the repeal of s. DCF 120.07(note); the amendment of ss. DCF 120.05(1)(f)6. and (3), 120.07, 120.08(4) and (5)(intro.); and the creation of ss. DCF 120.05(3)(b) and (4), 120.07(1)(note) and 120.07(2)and (2)(note), relating to emergency assistance for needy families.

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**Finding of Emergency**

The Department of Children and Families 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 recent large increase in foreclosures has caused tenants living in rental properties that are in foreclosure to lose their housing. Under the current rule, these tenants are not eligible for Emergency Assistance due to impending homelessness and would only be able to receive assistance if they became homeless. This emergency rule will allow these tenants to receive assistance for impending homelessness and avoid the additional expense and trauma of homelessness.

The current maximum payment amounts for Emergency Assistance due to homelessness and impending homelessness are insufficient to allow a smaller family to obtain or retain a permanent living accommodation. Increasing the payments for smaller households immediately will help them obtain or retain a permanent living accommodation with fewer resources from other sources and may prevent homelessness for these families.

The current rule has no maximum payment amount for Emergency Assistance due to an energy crisis. All other categories of assistance have a maximum payment based on group size. This emergency rule requires that families first exhaust resources available through the Wisconsin Home Energy Program and sets a maximum payment amount for assistance available for Emergency Assistance due to energy crisis to make better use of the program's limited funds.



## **Analysis Prepared by the Department of Children and Families**

**Statutory authority:** Sections 49.138 and 227.11 (2) (a), Stats.

**Statutes interpreted:** Section 49.138, Stats.

**Related statutes or rules:** Section 846.35, Stats., as created by 2009 Wisconsin Act 2; Section 16.957, Stats., and Chapter Adm 45

### **Explanation of agency authority**

Section 49.138, Stats., provides that the Department shall implement a program of emergency assistance to needy persons in cases of fire, flood, natural disaster, homelessness or impending homelessness, or energy crisis. There are 6 criteria under which a family may be considered to be homeless or to be facing impending homelessness. One of these criteria is if the family is without a fixed, regular, and adequate nighttime residence.

The Department shall establish the maximum amount of aid to be granted, except for cases of energy crisis, per family member.

### **Summary of the rule**

#### ***Eligibility for tenants facing impending homelessness because of a foreclosure action***

Under the current rule on Emergency Assistance, a group in rental housing that is facing impending homelessness because of a foreclosure action against their landlord is not eligible for assistance to obtain a new permanent living accommodation. To be eligible for Emergency Assistance for impending homelessness a group must be experiencing a financial crisis that makes it very difficult to make a rent payment, mortgage payment, or property tax payment and have been notified that they will be required to leave their current housing if they do not make that payment immediately.

In 2008, foreclosure filings in Wisconsin were 62% higher than in 2007 and were 249% higher than in 2006. The Joint Center for Housing Studies estimates that investor-owned one- to four-family rental properties account for nearly 20% of all foreclosures nationally. Despite the fact that low income families generally know that Emergency Assistance is not available for renters losing their housing due to a foreclosure action against the owner, at least 18 families in this situation have applied for Emergency Assistance at Milwaukee W-2 agencies in recent months.

Renters of properties in foreclosure can be even more vulnerable to homelessness than owners because tenants often have limited notice of the foreclosure and few resources to allow them to obtain replacement housing quickly. Until the recent enactment of s. 846.35 Stats., as created by 2009 Wisconsin Act 2, there was no requirement of notice to tenants in foreclosure of residential rental property. Section 846.35, Stats., provides that the plaintiff in an action for foreclosure of residential rental property must notify the tenant at filing of the action, when judgment is entered, and when the hearing to confirm the sale of the property has been scheduled. In addition, a tenant may retain possession of the rental unit for up to 2 months after the end of the

month in which the sale of the property is confirmed. These new protections for tenants apply to foreclosure actions that are commenced on or after March 5, 2009. The timeline for a foreclosure action can vary widely with the redemption period ranging from 3 to 12 months. Tenants facing removal from foreclosed properties for at least the next 4 months will clearly not be covered by s. 846.35, Stats.

This emergency rule provides that a group in rental housing that is facing impending homelessness because of a foreclosure action against their landlord will be eligible for Emergency Assistance to obtain a new permanent living accommodation. To be eligible for assistance, the group must have received written or oral notice that they will be removed from their rental housing because of a foreclosure action against the owner, the removal of the group from the rental housing is scheduled to occur within 30 days, and the group needs emergency assistance to obtain a permanent living accommodation. The Wisconsin Works agency will verify eligibility.

Payment amounts for types of need other than energy crisis

Section 49.138, Stats., provides that the Department shall establish the maximum amount of aid to be granted, except for cases of energy crisis, per family member. Under the current rule, the payment amount for cases of need due to fire, flood, natural disaster, homelessness, and impending homelessness is the lowest of the following:

- The total of the maximum payment amount per group member multiplied by the number of members of the Emergency Assistance group.
- The amount requested by the group.
- The total financial need due to the emergency.

For many years, the maximum payment amount per group member has been \$150.

In 2008, there were 10,458 Emergency Assistance grants issued and 93% were cases of need due to homelessness or impending homelessness. The current grant amounts for homelessness and impending homelessness are insufficient for smaller households to obtain or retain a permanent living accommodation. A 2-person group is eligible for a grant of \$300 and a 3-person group is eligible for a grant of \$450. The Department's analysis of housing costs for low-income families found that average rental costs are higher than \$470 for the smallest households in the counties where a majority of Emergency Assistance grants are issued, and rent does not increase proportionally with each new group member. Housing costs for families with 2 – 4 members are similar, and housing costs for families of 5 or more are similar with some increases for larger families. In SFY 08, Emergency Assistance grants issued to smaller size families of 2 to 3 members were 57% of total grants.

This emergency rule changes the payment amounts that eligible families will receive by increasing the amounts for smaller size families and decreasing the amounts for larger size families. The amounts were arrived at by attempting to make the overall fiscal impact cost neutral and within the existing amount of funds allocated for the Emergency Assistance program. The maximum payment amounts will be \$258 per group member when the group is 2 members, \$172 per group member when the group is 3 members, \$129 per group member when the group is 4 or 5 members, and \$110 per group member

when the group is 6 or more members. This will result in the following total payment amounts:

2 to 4 members	\$516
5 members	\$645
6 members	\$660
7 + members	\$110 for each additional member

Notice of changes to the maximum payment amounts will be published in the Administrative Register.

The rule complies with the statutory requirement that the Department establish the maximum amount of aid to be granted per family member by having different maximum payment amounts for members of groups of different sizes.

### Energy crisis

Under the current rule, an Emergency Assistance group is eligible for assistance if need has resulted from an emergency due to energy crisis, including lack of or imminent loss of essential home heating, with an immediate threat to the health or safety of the group either existing or likely to exist. The payment amount is the amount requested by the group or the total financial need due to the emergency. Financial need may include heating fuel, electricity, and repair or replacement services necessary to obtain or maintain the basic heat and electricity requirements of an average household.

There is currently no maximum payment amount for Emergency Assistance based on need due to an energy crisis. For all other types of need, there is a maximum payment amount based on group size. The average Emergency Assistance grant for all types of need is approximately \$512. Some grants for energy crisis have been as high as \$3,300. From July 2007 to September 2008, approximately 6% of Emergency Assistance grants for energy crisis were \$1,000 or above, totaling over \$41,000.

This emergency rule establishes a maximum payment amount per group for cases of need due to energy crisis. The initial maximum payment amount will be \$500 and changes to that amount will be announced in the Administrative Register. A group is eligible for assistance if the group meets the following criteria:

- The group needs financial assistance to obtain or maintain basic heat and electricity.
- The lack or imminent loss of heat or electricity is or is likely to be an immediate threat to the health or safety of the group.
- The energy crisis is due to reasons beyond the control of an adult member of the group or constitute good cause as determined by the W-2 agency.
- The group has exhausted resources available through the Wisconsin Home Energy Assistance Program (WHEAP) and assistance available through local utility companies as required by the Public Service Commission.

The WHEAP program had \$147 million available for low income energy assistance this heating season. The total Emergency Assistance available for all types of emergency for FY 09 was initially \$6 million. Another \$1 million was added in 2009 Wisconsin Act 2.

### **Summary of factual data and analytical methodologies**

The policy changes in this rule are based on recommendations of a workgroup comprised of representatives of W-2 agencies and advocacy groups.

*Impending homelessness due to foreclosure.* Section 49.138 (1m) provides that a family is homeless or facing impending homelessness if the family is not in a fixed, regular, and adequate residence. A family is not in a fixed, regular, and adequate residence if they have been notified that they will be removed from their rental housing due to a foreclosure action against the owner and the removal of the group is scheduled to occur within 30 days.

The statistics on the increase in foreclosures in Wisconsin are from *Home foreclosures up 81% in U.S., 62% in Wisconsin*, <http://www.madison.com>, January 15, 2009.

The estimate on the number of foreclosures that are one- to four-family rental properties is by Nicolas P. Retsinas, Director of the Joint Center for Housing Studies, quoted on the website of the National Coalition for the Homeless, <http://www.nationalhomeless.org/foreclosure/index.html>, March 9, 2009.

*Payment amounts.* The Department analysis of the housing costs of low-income families is based on data from the Food Share program for December 2007.

The executive budget bill, 2009 Assembly Bill 75, includes a proposal to eliminate the requirement that the maximum payment amount set by the Department be based on family size. The Department's Bureau of Working Families is implementing the new payment amounts based on the current statutory language to not delay necessary assistance to smaller low-income families.

*Energy crisis.* Section 49.138 (1m), Stats., provides that the Department shall establish the maximum amount of aid to be granted, except for cases of energy crisis, per family member. The statute is silent on whether the Department may establish a maximum payment amount based on any criteria other than per family member for cases of need due to energy crisis. The rule establishes a maximum payment amount per group regardless of group size.

### **Summary of related federal requirements**

Emergency Assistance is a Temporary Assistance to Needy Families (TANF) program option available to states under previous Aid to Families with Dependent Children (AFDC) statutes to provide short-time assistance to needy families with children. Wisconsin chose to continue the Emergency Assistance program when Wisconsin repealed the AFDC program and accepted federal TANF block grant funds.

There are no federal requirements related to this emergency rule, except that TANF funds must be used to provide assistance to families with children.

### **Comparison with rules in adjacent states**

None of the adjacent states appear to have an Emergency Assistance program that is as similar to the AFDC-related Emergency Assistance program as that of Wisconsin. These states do have a variety of crisis assistance and prevention programs that are

administered in different ways. The programs are generally not limited to families with children.

**Agency contact person**

Rebecca Swartz, Bureau of Working Families, (608) 266-1717,  
[rebecca.swartz@wisconsin.gov](mailto:rebecca.swartz@wisconsin.gov).

**SECTION 1. DCF 120.05 (1) (f) 6. and (3) are amended to read:**

~~DCF 120.05 (1) (f) 6. An energy crisis, including lack of essential home heating or imminent loss of essential home heating, with an immediate threat to the health or safety of the group either existing or likely to exist as determined under sub. (4).~~

**(3) ELIGIBILITY DUE TO IMPENDING HOMELESSNESS.** An emergency assistance group shall be considered to be facing impending homelessness for purposes of determining nonfinancial eligibility under sub. (1) if ~~the~~ either of the following apply:

(a) The emergency assistance group is experiencing a financial crisis that makes it very difficult to make a rent payment, mortgage payment, or property tax payment and the group has been notified that it will be required to leave its current housing if it does not make that payment immediately.

~~(a)~~ 1. The W-2 agency shall determine that the emergency assistance group is experiencing a financial crisis due to reasons that are either beyond the control of an adult member of the group or that constitute good cause as determined by the W-2 agency.

~~(b)~~ 2. The W-2 agency shall verify that the financial crisis was caused by one or more of the following:

~~1a.~~ 1a. Loss of employment that does not include voluntarily leaving appropriate employment without good cause.

~~2b.~~ 2b. Substantial loss of wages due to illness or injury of a group member, domestic violence, lack of child care, a transportation breakdown, or a reduction of work hours by an employer.

~~3c.~~ 3c. Loss of income due to a second parent leaving the group.

4d. Exceptional, unexpected, and necessary expenses that are not the responsibility of a third party, such as car repair expenses necessary for transportation to work or medical expenses required to be paid.

5e. Loss of W-2 benefits due to a sanction that is subsequently overturned through the dispute resolution process under s. 49.152, Stats.

6f. Other reasonable circumstances as determined by the W-2 agency.

(e)3. The W-2 agency shall verify that the emergency assistance group has received at least one of the following notices:

1a. A notice terminating tenancy for failure to pay rent that meets the minimum requirements of s. 704.17, Stats.

2b. A summons and complaint for an eviction action which is based on failure to pay rent.

3c. A notice of foreclosure for failure to pay property taxes or a mortgage.

4d. A summons and complaint for a foreclosure action that is based on failure to pay property taxes or a mortgage.

5e. A writ of assistance, notice of sale, or other verifiable documentation that a foreclosure judgment has been entered against a member of the emergency assistance group and the group will be required to vacate the premises imminently.

**SECTION 2. DCF 120.05 (3) (b) and (4) are created to read:**

**DCF 120.05 (3) (b) 1.** The emergency assistance group has received written or oral notice that they will be removed from their rental housing because of a foreclosure action against the owner.

Note: Under s. 846.35 (1) (a) 3., Stats., as created by 2009 Wisconsin Act 2, formal notice to the tenant of the date and time of the hearing to confirm the sale of the property will be required for foreclosure

actions commenced on or after March 5, 2009. This notice will not be required for some tenants facing impending homelessness because of a foreclosure during the effective period of this emergency rule.

2. The removal of the group from the rental housing is scheduled to occur within 30 days.

3. The group needs emergency assistance to obtain a permanent living accommodation.

4. The W-2 agency has verified subd. 1. to 3.

**(4) ELIGIBILITY DUE TO ENERGY CRISIS.** An emergency assistance group is eligible for assistance due to an energy crisis if all of the following apply:

(a) The group needs financial assistance to obtain or maintain basic heat and electricity.

(b) The lack of or imminent loss of heat or electricity is or is likely to be an immediate threat to the health or safety of the group.

(c) The energy crisis is due to reasons beyond the control of an adult member of the group or constitute good cause as determined by the W-2 agency.

(d) The group has exhausted resources available through the Wisconsin Home Energy Assistance Program and assistance available through a local utility company as required by the public service commission.

Note: For more information on the Wisconsin Home Energy Assistance Program (WHEAP), call 1-866-HEATWIS (1-866-432-8947) or click on the "where to apply" tab at <http://www.homeenergyplus.wi.gov/>. For more information on assistance required by the Public Service Commission, contact 800-225-1129 or <http://psc.wi.gov>.



**SECTION 3. DCF 120.07 is amended to read:**

**DCF 120.07 Payment amount.** ~~The (1) In cases of fire, flood, natural disaster, homelessness, and impending homelessness, the~~ emergency assistance payment shall be the lowest of the following 3 amounts:

(~~1a~~) The total of the maximum payment amount per group member for that group size multiplied by the number of members in the emergency assistance group.

(~~2b~~) The amount requested by the group.

(~~3c~~) The total financial need due to the emergency, as determined in s. DCF 120.06

(1).

**SECTION 4. DCF 120.07 (note) is repealed.**

**SECTION 5. DCF 120.07 (1) (note) is created to read:**

Note: For cases of need due to fire, flood, natural disaster, homelessness, and impending homelessness, the maximum payment amount per group member is the following:

\$258 per group member when the group is 2 members.

\$172 per group member when the group is 3 members.

\$129 per group member when the group is 4 or 5 members.

\$110 per group member when the group is 6 or more members.

Changes to the maximum payment amounts will be announced in the Administrative Register.

**SECTION 6. DCF 120.07 (2) and (2)(note) are created to read:**

**DCF 120.07 (2)** In cases of need due to energy crisis, the emergency assistance payment shall be the lowest of the following:

(a) The maximum payment amount for the group.

(b) The total financial need due to the emergency, as determined in s. DCF 120.06

(1).

Note: For cases of need due to an energy crisis, the maximum payment amount per group is \$500. Changes to the maximum payment amount will be announced in the Administrative Register.

**SECTION 7. DCF 120.08 (4) and (5) (intro.) are amended to read:**

**DCF 120.08 (4)** If the emergency assistance group's eligibility is due to homelessness under s. DCF 120.05 (2) or impending homelessness under s. DCF 120.05 (3) (b), the agency shall issue a payment, following the eligibility determination, within 5 working days of the date that the group notifies the agency that a permanent living accommodation has been obtained.

**(5) (intro.)** Emergency assistance payments for impending homelessness under s. DCF 120.05 (3) (a) may be issued to obtain a new permanent living accommodation or retain a current permanent living accommodation.

**SECTION 8 . EFFECTIVE DATE.** This rule shall take effect on April 22, 2009, as provided in s. 227.24 (1) (c), Stats.





**State of Wisconsin  
Department of Children and Families**

**EMERGENCY RULE**

**Authorized Hours of Subsidized Child Care**

**DCF 201**

The Wisconsin Department of Children and Families orders the repeal of s. DCF 201.02(3); the renumbering of ss. DCF 201.04(2)(b), (d), and (e) to (h); the amendment of ss. DCF 201.01, 201.02(3) and (19), 201.03(3), (5)(a)(intro.) and (b), 201.04(1)(a)2., (2)(a)1.b., (2)(c), 201.05(title), (2), (3), and (4), 201.06(title), (1)(b), and (c), (2)(a)(intro.) and 2., (b)(intro.) and 1., (d), and (e), and (4), 201.08(3)(a); and the creation of ss. DCF 201.02(2m), 201.04(2g)(title), (b), and (c), relating to authorized hours of subsidized child care and affecting small businesses.

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**Finding of Emergency**

The Department of Children and Families 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:

2009 Wisconsin Act 28 assumes that implementation of s. 49.155 (6g), Stats., will save an estimated \$9 million over the 2009-2011 biennium.

**Analysis Prepared by the Department of Children and Families**

**Statutory authority:** Sections 49.155 (6g), Stats., as created by 2009 Wisconsin Act 28, and 227.11 (2) (a), Stats.

**Statutes interpreted:** Sections 48.651 and 49.155, Stats.

**Explanation of Agency Authority**

Section 49.155 (1m) (a), Stats., provides the work, training, and educational activities for which an eligible individual can receive a subsidy for child care. A child care administrative agency determines the hours of child care authorized per week and authorizes payment to a child care provider.

Maximum number of authorized hours. Section 49.155 (6g) (a), Stats., as created by 2009 Wisconsin Act 28, provides that no more than 12 hours of child care per day per

child may be authorized unless the parent provides written documentation of work or transportation requirements that exceed 12 hours in a day. The child care administrative agency may authorize more than 12 hours, not exceeding 16 hours, of child care per day for a child whose parent provides written documentation of work or transportation requirements that exceed 12 hours in a day. If the authorized hours of child care per day for a child will be reduced from more than 12 to 12 or less because the child's parent does not provide the written documentation, the child care administrative agency shall provide to the child's parent and to the child care provider 4 weeks' notice of the reduction in authorized hours before actually reducing the child's authorized hours.

Adjusting authorized hours. Section 49.155 (6g) (am) and (b), Stats., as created by 2009 Wisconsin Act 28, provides that if payment to a child care provider is based on authorized hours of child care, the department shall do all of the following with respect to establishing and adjusting the number of authorized hours per child:

- The department shall track a child's hourly usage of child care authorizations over a 6-week period.
- If the child's hourly usage tracked is less than 60 % of the authorized hours of child care, the department shall reduce the authorized hours of child care for the child to 90% of the maximum number of hours of child care that the child attended during that 6-week period.
- The department shall provide written notice of the proposed adjustment to the child's parent, the child care provider, and the applicable county department or agency.
- The department shall provide a grace period after the number of authorized hours are reduced during which time the child care subsidy amount paid to the child care provider for the child shall remain the same as before the reduction in authorized hours was made.

The department shall exclude from a child's hourly usage calculation all of the following:

- One week per year of vacation time for the child care provider.
- One week per year of sick time for the child care provider.
- Two weeks per year of vacation time for the child's parent.

The department shall promulgate rules that specify how these requirements will be implemented.

### **Summary of the Rule**

The rules incorporate the provisions of s. 49.155 (6g), Stats., regarding authorized hours of subsidized child care.

The statute requires a grace period during which the subsidy paid to the provider remains the same after the authorized hours are reduced. The rules provide that the grace period will be 2 weeks.

The rules also provide that weeks for which the child care administrative agency approved payment to a provider to hold a slot during a parent's temporary break in employment shall be excluded from a child's hourly usage calculation. Section DCF 201.04 (2) (h) currently provides that the child care administrative agency may authorize payment to a provider to hold a slot for a child if the parent has a temporary break in employment and intends to return to work and continue to use the child care provider upon return to work. The agency may authorize payment for no more than 6 weeks if the absence is due to a medical reason and is documented by a physician or for no more than 4 weeks if the absence is for other reasons.

In addition, the rules update agency terminology and definitions to reflect changes in 2009 Wisconsin Act 28 that authorize the department to contract with counties, tribes, W-2 agencies, child care resource and referral agencies, or other agencies to administer the child care subsidy program and to certify child care providers. Act 28 also provides for department administration of child care in Milwaukee County.

### **Summary of Factual Data and Analytical Methodologies**

The Governor's veto message requested the department to implement a 2-week grace period.

### **Summary of Related Federal Requirements**

None

### **Comparison to 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.

### **Agency Contact Person**

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pirkko.moilanen@wisconsin.gov.

**SECTION 1. DCF 201.01 is amended to read:**

**DCF 201.01 Authority, purpose, and applicability.** This chapter is promulgated under the authority of s. 49.155, Stats., excluding subs. (1d) and (1g), and s. 227.11 (2), Stats., to provide definitions, procedures, and standards for the administration of child care funds. This chapter applies to the department, county and tribal agencies, child care administrative agencies, Wisconsin works agencies, private agencies under contract to administer child care funds, licensed and certified child care providers, and eligible parents.

**SECTION 2. DCF 201.02 (2m) is created to read:**

**DCF 201.02 (2m)** “Certification agency” means the department in a county having a population of 500,000 or more or any agency that has a contract with the department to certify child care providers under s. 48.651 and ch. DCF 202 in a particular county or tribal area.

**SECTION 3. DCF 201.02 (3) and (19) are amended to read:**

**DCF 201.02 (3)** “Child care administrative agency” or “agency” means any agency that has a contract with the department to administer child care funds; ~~or~~ any agency that has a subcontract to administer child care funds with an agency that has a contract with the department; or, in a county having a population of 500,000 or more, the department or the “unit” as defined in s. 49.825 (1) (e), Stats.

**(19)** “Rate” means the maximum amount a ~~county or tribal~~ child care administrative agency will pay for child care.

**SECTION 4. DCF 201.03 (3), (5) (a) (intro.) and (b) are amended to read:**

**DCF 201.03 (3) ASSISTANCE TO ~~COUNTIES, TRIBES AND W-2~~ CHILD CARE ADMINISTRATIVE AGENCIES.** The department shall provide information and technical assistance to ~~county, tribal and W-2~~ child care administrative agencies regarding administration of the child care funding program.

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

(b) The department may grant a variance to a nonstatutory requirement under ss. DCF 201.04 to 201.06 on written request of a ~~county or tribal~~ child care administrative agency if the department is convinced that an alternative means meets the intent of the requirement.

**SECTION 5. DCF 201.04 (1) (a) 2. and (2) (a) 1. b. are amended to read:**

**DCF 201.04 (1) (a) 2.** Providers certified by a ~~county or tribal~~ certification agency under standards specified in s. DCF 202.08 or 202.09. The child care administrative agency may authorize payment to providers who become certified from the date the certification application was received by the ~~child care administrative~~ certification agency.

**(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 6. DCF 201.04 (2) (b) is renumbered DCF 201.04 (2g) (d).**



**SECTION 7. DCF 201.04 (2) (c) is amended to read:**

**DCF 201.04 (2) (c)** If a ~~county or tribal~~ child care administrative agency authorizes payment for child care services by means of a voucher issued to the parents or by contract with a provider, billing and collection of any parent co-payment requirement is the responsibility of the provider.

**SECTION 8. DCF 201.04 (2) (d) is renumbered DCF 201.04 (2g) (a) and DCF 201.04 (2) (e) to (h) are respectively renumbered DCF 201.04 (2g) (e) to (h).**

**SECTION 9. DCF 201.04 (2g) (title), (b), and (c) are created to read:**

**DCF 201.04 (2g) PAYMENT AUTHORIZATION.**

(b) 1. Except as provided in subd. 2., the child care administrative agency shall authorize no more than 12 hours of child care per day per child.

2. The child care administrative agency may authorize more than 12 hours, not exceeding 16 hours, of child care per day for a child whose parent provides written documentation of work or transportation requirements that exceed 12 hours in a day.

3. If the authorized hours of child care per day for a child will be reduced from more than 12 to 12 or fewer because the child's parent does not provide the written documentation required under subd. 2., the child care administrative agency shall provide to the child's parent who is receiving the subsidy under s. 49.155, Stats., and to the child's child care provider 4 weeks' notice of the reduction in authorized hours before actually reducing the child's authorized hours.

(c) 1. If reimbursement to a child care provider is based on weekly authorized hours of child care, the department shall do all of the following with respect to establishing and adjusting the number of authorized hours per child:

a. The department shall track a child's weekly usage of child care authorizations over a 6-week period.

b. If the child's hourly usage tracked under subd. 1.a. is less than 60 percent of the authorized hours of child care, the department shall reduce the authorized hours of child care for the child to 90 percent of the maximum number of hours of child care that the child attended during any week of that 6-week period.

c. The department shall provide written notice of the adjustment under subd. 1. b. to the child's parent who is receiving the subsidy under this section, the child's child care provider, and the applicable child care administrative agency.

d. The department shall provide a grace period of 2 weeks after the number of authorized hours are reduced under subd. 1. b., during which time the child care subsidy amount paid to the child care provider for the child shall remain the same as before the reduction in authorized hours was made.

2. The department shall exclude from a child's hourly usage calculation under subd. 1. b., all of the following:

a. One week per year of vacation time for the child's provider.

b. One week per year of sick time for the child's provider.

c. Two weeks per year of vacation time for the child's parent who is receiving the subsidy under s. 49.155, Stats., with the child.

d. Weeks for which the child care administrative agency approved payment to a provider to hold a slot during a parent's temporary break in employment under par. (h).

**SECTION 10. DCF 201.05 (title), (2), (3), and (4) are amended to read:**

**DCF 201.05 ~~County and tribal~~ Child care administrative agency responsibilities.**

(2) TRAINING REQUIREMENT. ~~County and tribal~~ Child care administrative agencies shall ensure that each new child care worker completes the department's initial training during the first 6 months of employment.

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

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

(b) ~~County and tribal~~ Child care administrative agencies shall require child care providers to sign a memorandum of understanding prior to receiving authorization or payment that specifies that the provider agrees to adhere to child care subsidy attendance reporting policies and cooperate with the agency in all program monitoring efforts.

**SECTION 11. DCF 201.06 (title); (1) (b), and (c); (2) (a) (intro.) and 2., (b) (intro.) and 1., (d), and (e); and (4) are amended to read:**

**DCF 201.06 Establishing county and tribal agency child care rates.**

(1) (b) *Survey*. The ~~county or tribal~~ child care administrative agency, except a tribal agency acting under par. (a) 2., shall annually contact all licensed group day care centers and licensed family day care centers in the county or tribal area to determine the child care prices they charge to the general community, except if the department arranges for a survey independent of the ~~county or tribal~~ child care administrative agency. The child care prices shall be submitted in writing to be included in the survey.

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

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

2. In determining whether 75% of the day care slots can be purchased at or below the maximum rate, the ~~county or tribal~~ child care administrative agency may exclude day care centers that operate less than 5 days a week or 5 hours a day, receive funding from a county department established under s. 51.42 or 51.437, Stats., do not have a set full-time, weekly child care price, or at which more than 75% of the children's care is subsidized under s. 49.155, Stats., excluding subs. (1d) and (1g).

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

1. Maximum rates shall be set so that at least 75% of the family day care center slots in the county or tribal area may be purchased at or below the maximum rates. The number of slots attributed to a center shall be equal to the center's licensed capacity. In determining whether 75% of the day care slots can be purchased at or below the maximum rate, the ~~county or tribal~~ child care administrative agency may exclude day care centers that operate less than 5 days a week or 5 hours a day, receive funding from a county department established under s. 51.42 or 51.437, Stats., do not have a set full-time, weekly child care price, or at which more than 75% of the children's care is subsidized under s. 49.155, Stats., excluding subs. (1d) and (1g).

(d) *In-home day care.* For in-home care, the ~~county or tribal~~ child care administrative agency shall establish the maximum rate at the level of no less than the state minimum wage established under ch. 104, Stats., and ch. DWD 272. The child care administrative agency may authorize payment to the child care provider at the local reimbursement rate for the type of care provided multiplied by the number of children in care if this rate exceeds the minimum wage.

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

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

**SECTION 12. DCF 201.08 (3) (a) is amended to read:**

**DCF 201.08 (3) (a) 1.** A change in child care prices or ~~in the rates paid by county or tribal agencies.~~

**SECTION 13. EFFECTIVE DATE.** This rule shall take effect on May 17, 2010, as provided in s. 227.24 (1) (c), Stats.





**State of Wisconsin  
Department of Children and Families**

**EMERGENCY RULE**

**Child Care Subsidy Program Integrity**

**DCF 201**

The Wisconsin Department of Children and Families orders the amendment of ss. DCF 201.04(5)(title), (b), (c)3., (d), (e), and (f), and 201.07(1)(e); the repeal and recreation of ss. DCF 201.04(5)(b)1. and 2. and (c)(intro.); and the creation of ss. DCF 201.02(7g) and (7r), 201.04(5)(a)(title), 201.04(5)(b)3., 4., 5., (bm), (c)4. and 5., (cg), (cr), (ed), (eh), (ep), (ep), and (g), and 201.07(1)(f), relating to child care subsidy program integrity.

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**Finding of Emergency**

The Department of Children and Families 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 of Children and Families has determined that significant disparities currently exist between DCF 201 and the intent of 2009 Wisconsin Acts 28 and 77 regarding Wisconsin Shares program integrity efforts. The recent efforts of the legislature and the department to address child care fraud and program integrity are estimated to save \$100 million over the course of the biennium. Currently over \$7.1 million of child care provider overpayments have yet to be collected due to the lack of authority to use basic collections practices such as tax intercept, wage levy, and property liens. This rule will permit the department to more aggressively collect on these debts, strengthen the department's ability to further tighten requirements for child care providers wishing to do business with the Wisconsin Shares program, and better enforce the rules of the program. These changes will result in continued fiscal savings as well as ensure better quality child care for the children of Wisconsin.

**Analysis Prepared by the department of Children and Families**

**Statutory authority:** Sections 49.155 (7m), 49.195 (3s), and 227.11 (2) (a), Stats.  
**Statutes interpreted:** Sections 49.155 and 49.195, Stats.



## **Explanation of Agency Authority**

Section 49.155 (7m) (a), Stats., as created by 2009 Wisconsin Act 28 and renumbered by 2009 Wisconsin Act 77, provides that the department shall by rule establish policies and procedures permitting the department to do all of the following if a child care provider submits false, misleading, or irregular information to the department or if a child care provider fails to comply with the terms of the program and fails to provide to the satisfaction of the department an explanation for the noncompliance:

- Recoup payments made to the child care provider.
- Withhold payments to be made to the child care provider.
- Impose a forfeiture on the child care provider.

Section 49.195 (3m) and (3n), Stats., provide for collection of overpayments under s. 49.155, Stats., by warrant and execution and levy. Subsection (3s) provides that the department shall specify by rule when requests for reviews, hearings and appeals under s. 49.195, Stats., may be made and the process to be used for the reviews, hearings and appeals. In promulgating the rules, the department shall provide for a hearing or review after a warrant under sub. (3m) has been issued and before the warrant has been executed, before property is levied under sub. (3m) or (3n) and after levied property is seized and before it is sold. The department shall specify by rule the time limit for a request for review or hearing. The department shall also specify by rule a minimum amount that must be due before collection proceedings under s. 49.195, Stats., may be commenced.

## **Summary of the Rules**

The rules establish policies and procedures specifying when a child care provider is responsible for an overpayment under the child care subsidy program, techniques for collecting overpayments, and penalties that may be imposed on a provider who fails to comply with the terms of the program. Promulgation of these rules will also allow the department to implement s. 49.155 (7m) (b), Stats., as created by 2009 Wisconsin Act 77, regarding personal liability for overpayments and penalties for certain representatives of a child care business that is a corporation or limited liability company if the business is unable to pay.

A provider is responsible for an overpayment if any of the following conditions are met:

- The provider's attendance records indicate more hours than a child actually attended. If attended hours were misrepresented by the provider, the provider is responsible for an overpayment of the difference between the reimbursed hours and the actual hours of attendance regardless of the type of authorization.
- Care was provided at a location other than the location for which the authorization for care was issued, except for field trips.
- Care for children during time when the provider was in violation of limits on the maximum number of children in care or the required provider-to-child ratios for children of various ages.

- Care for children during time when the provider was in violation of the terms of the provider's license, including the age of the children served by the center and hours, days, and months of operation of the center.
- The provider benefited by receiving more child care reimbursement than otherwise would have been paid on the family's behalf under child care assistance program requirements, the parent is not responsible for the overpayment, and the reimbursement did not benefit the parent by causing the parent to pay less for child care expenses than the family otherwise would have been required to pay under child care assistance program requirements.

A provider and parent are jointly and severally liable for an overpayment if the provider and parent collude to violate a requirement of the Wisconsin Shares program.

If a child care provider submits false, misleading, or irregular information to a child care administrative agency or the department or if a child care provider fails to comply with the terms of the child care subsidy program and the provider fails to provide to the satisfaction of the department an explanation for the noncompliance, the child care administrative agency or department may refuse to issue payments to the provider, in addition to the authority granted the department under s. 49.155 (7) (b) 4., Stats.; recoup payments made to the provider; and impose a forfeiture on the provider. The existing rule also allows a child care administrative agency or the department to refuse to issue new child care authorizations to a provider for a period of time not to exceed 6 months and to revoke existing child care authorizations to the provider.

A child care administrative agency or the department may impose a forfeiture of \$100 to \$10,000 on a child care provider if the provider violates a provision of the Wisconsin Shares program. In determining the amount of the forfeiture, the child care administrative agency or department shall identify a specific date relating to a specific child and may consider the following factors:

- Seriousness of the violation.
- Extent of the violation.
- History of prior violations.
- Prior imposition of penalties.
- Provider willingness to obey program rules.

If the department or a certification agency has given notice to a provider that the provider is in violation of applicable licensing or certification rules and the provider has not corrected the violation, the department or child care administrative agency may refuse to issue new child care authorizations, revoke existing child care authorizations, or refuse to issue payments until the provider has corrected the violation and demonstrated sufficient controls to ensure that the violation or comparable violations are unlikely to occur again.

If a provider has not repaid an overpayment, the child care administrative agency or department may recover the overpayment by making an offset from current or future

funds under its control that are payable to the provider of no more than 50% of each payment if the provider is expected to continue to care for children whose care is subsidized under s. 49.155, Stats. If a provider or former provider has not repaid an overpayment and the provider or former provider is not expected to continue to care for children whose care is subsidized under s. 49.155, Stats, the child care administrative agency or department may recover the overpayment by making an offset from 100% of funds under its control that are payable to the provider or former provider.

If a debt for repayment of an overpayment is delinquent and no appeal rights are pending, Section 49.195 (3m), Stats., authorizes the department to issue a warrant that is considered in all respects a final judgment constituting a perfected lien upon the debtor's right, title, and interest in all real and personal property located in the county in which the warrant is entered. The department shall provide the debtor with notice and an opportunity for a hearing under ch. 227, Stats, when a warrant has been issued, before property is seized, and before seized property is sold. The debtor may request a hearing under ch. 227, Stats., within 20 days from the date on the notice. The appeal shall be limited to questions of prior payment of the debt that the department is proceeding against and mistaken identity of the debtor. The department may not withdraw the warrant based on a hearing request when a warrant is issued or cease enforcement before property is seized based on a hearing request. If a hearing is requested after property is seized, the seized property may not be sold before the hearing decision is issued or the hearing request is withdrawn. When the amount set forth in the warrant and all costs due the department have been paid, the department shall issue a satisfaction of the warrant. Statutory exemption rights in ss. 815.18 (3) and 815.20, Stats., apply to this administrative warrant and execution procedure.

If a debt for repayment of an overpayment is delinquent and no appeal rights are pending, Section 49.195 (3n), Stats., authorizes the department to levy on personal property belonging to the debtor, including wages due and deposits in a financial institution account. The department shall first send a notice of intent to levy at least 10 days prior to the levy, personally or by any type of mail service that requires a signature of acceptance. Notice prior to levy is not required for a subsequent levy on any debt of the same debtor within one year of the date of service of the original levy. Next, the department shall serve the levy upon the debtor and 3<sup>rd</sup> party in possession of property to which the debtor has rights. The debtor may appeal the levy proceeding under ch. 227, Stats., within 20 days from the date on the service of levy. The appeal shall be limited to questions of prior payment and mistaken identity of the debtor. The levy is not stayed pending an appeal where property is secured through the levy.

Within 20 days from the service of the levy upon a 3<sup>rd</sup> party, the 3<sup>rd</sup> party shall file an answer with the department stating whether the 3<sup>rd</sup> party is in possession of or obligated with respect to property or rights to property of the debtor, including a description of the property or the rights to property and the nature and dollar amount of any such obligation. The 3<sup>rd</sup> party shall, upon demand of the department, surrender the personal property or rights or discharge the obligation to the department, except that part of the personal

property or rights which is, at the time of the demand, subject to any prior attachment or execution under any judicial process.

If levied personal property that has been surrendered to the department is not a liquid asset in the form of cash, check, or an equivalent that can be applied to the debt without a sale of the asset, the department shall provide the debtor with notice and an opportunity for a hearing under ch. 227, Stats., before surrendered property is sold. The debtor may request a hearing under ch. 227, Stats., within 20 days from the date on the notice. The appeal shall be limited to questions of prior payment of the debt that the department is proceeding against and mistaken identity of the debtor. If a hearing is requested, surrendered property may not be sold before the hearing decision is issued or the hearing request is withdrawn.

The debtor is entitled to an exemption from levy of the greater of a subsistence allowance of 75% of the debtor's disposable earnings then due and owing or an amount equal to 30 times the federal minimum hourly wage for each full week of the of the debtor's pay period, an amount equal to 60 times the federal minimum hourly wage for a two-week pay period, or an amount equal to 130 times the federal minimum hourly wage for a monthly pay period. The debtor is entitled to an exemption of the first \$1,000 of an account in a depository institution.

Any appeal based on a notice received in a warrant and execution or levy proceeding or a notice of intent to certify a debt for set-off against a state tax refund shall be limited to questions of prior payment of the debt that the department is proceeding against and mistaken identity of the debtor. The minimum amount that must be due before warrant and execution and levy procedures may be commenced is \$300. The department may waive recovery of an overpayment if the department has made reasonable efforts to recover the overpayment from the debtor and determines it is no longer cost effective to continue overpayment recovery efforts.

#### **Summary of Factual Data and Analytical Methodologies**

Section 201.04 (5) (b) 1. of this rule refers to s. DCF 201.04 (2g) (a). Section DCF 201.04 (2) (d) was renumbered s. DCF 201.04 (2g) (a) in EmR10-056/CR10-056, relating to authorized hours of subsidized child care.

#### **Summary of Related Federal Requirements**

States are required to implement strategies to prevent, measure, identify, reduce, and collect improper payments for funding received under the Child Care and Development Fund.

#### **Comparison to Adjacent States**

**Minnesota.** Overpayments that benefit a provider and not a family are recouped from future payments to the provider if the provider continues to care for subsidized children.

**Illinois.** Overpayments are recovered from providers who do not comply with program policies by tax intercept, reductions in future payments, or other means determined to be effective.

**Iowa.** Iowa uses factors to be considered in determining penalties against providers who violate the terms of the child care program.

**Michigan.** Michigan has proposed rules on overpayment recovery and revocation if a provider's attendance records are not accurate.

**Agency Contact Person**

Jim Bates, Section Chief, Fraud Detection and Investigation Unit, Division of Early Care and Education, (608) 266-6946, [jim.bates@wisconsin.gov](mailto:jim.bates@wisconsin.gov).

**SECTION 1. DCF 201.02 (7g) and (7r) are created to read:**

**DCF 201.02 (7g)** “Complies with the payment schedule” as used in s. 49.195 (3m) (h), Stats., means the debtor submits each payment due on an overpayment so that it is received by the department by the due date every month over the life of the debt.

**(7r)** “Debtor” means a liable person who received an overpayment of reimbursements for care of children whose care is subsidized under s. 49.155, Stats., or a person who is liable under s. 49.155 (7m) (b), Stats.

**SECTION 2. DCF 201.04 (5) (title) is amended to read:**

**DCF 201. 04 (5) OVERPAYMENT RECOVERY AND ~~SANCTIONS~~ PENALTIES.**

**SECTION 3. DCF 201. 04 (5) (a) (title) is created to read:**

**DCF 201. 04 (5) (a) (title)** *Parent overpayments.*

**SECTION 4. DCF 201. 04 (5) (b) is amended to read:**

**DCF 201. 04 (5) (b)** *Provider overpayments.* A child care administrative agency or the department shall take all reasonable steps necessary to recoup or recover from a provider any overpayments made for child care services for which the provider is responsible or overpayments caused by administrative error that benefited the provider. A provider shall be responsible for an overpayment if ~~both of the following criteria are satisfied~~ any of the following conditions are met:

**SECTION 5. DCF 201. 04 (5) (b) 1. and 2. are repealed and recreated to read:**

**DCF 201. 04 (5) (b) 1.** A provider received reimbursement based on attendance records that indicate more hours than a child actually attended. If attended hours were

misrepresented by the provider, the provider is responsible for an overpayment of the difference between the reimbursed hours and the actual hours of attendance regardless of the type of authorization under s. DCF 201.04 (2g) (a).

2. A provider received reimbursement for care provided at a location other than the location for which the authorization for care was issued, except for field trips.

**SECTION 6. DCF 201. 04 (5) (b) 3., 4., and 5. and (bm) are created to read:**

**DCF 201. 04 (5) (b) 3.** A provider received reimbursement made for care during time when the provider was in violation of the applicable provision regarding limits on the maximum number of children in care or the required provider-to-child ratios for children of various ages in ss. DCF 202.08 (6), 250.05 (4), 251.05 (4), or 252.42 (3).

4. A provider received reimbursement for care during time when the provider was in violation of the terms of the provider's license under ss. DCF 250.04 (1), 251.04 (1), or 252.05 (3), including age of the children served by the center and hours, days, and months of operation of the center.

5. A provider benefited by receiving more child care reimbursement than otherwise would have been paid on the family's behalf under child care assistance program requirements, the parent is not responsible for the overpayment under par. (a), and the reimbursement did not benefit the parent by causing the parent to pay less for child care expenses than the family otherwise would have been required to pay under child care assistance program requirements.

(bm) *Joint liability.* A provider and parent shall be jointly and severally liable for an overpayment if the provider and parent collude to violate a requirement under this chapter or s. 49.155, Stats.

**SECTION 7. DCF 201. 04 (5) (c) (intro.) is repealed and recreated to read:**

**DCF 201. 04 (5) (c) (intro.)** *Penalties for subsidy violations.* If a child care provider submits false, misleading, or irregular information to a child care administrative agency or the department or if a child care provider fails to comply with the terms of the program in s. 49.155, Stats., or this chapter and the provider fails to provide to the satisfaction of the department an explanation for the noncompliance, the child care administrative agency or department may take one or more of the following steps:

**SECTION 8. DCF 201. 04 (5) (c) 3. is amended to read:**

**DCF 201. 04 (5) (c) 3.** Refuse to issue payments to the provider ~~until the provider has corrected the violation,~~ in addition to the authority granted to the department under s. 49.155 (7) (b) 4., Stats.

**SECTION 9. DCF 201. 04 (5) (c) 4. and 5. are created to read:**

**DCF 201. 04 (5) (c) 4.** Recoup payments made to the provider.

5. Impose a forfeiture on the provider under par. (cg).

**SECTION 10. DCF 201. 04 (5) (cg) and (cr) are created to read:**

**DCF 201. 04 (5) (cg)** *Forfeitures.* A child care administrative agency or the department may impose a forfeiture of \$100 to \$10,000 on a child care provider if the provider violates a provision in this chapter or s. 49.155, Stats. In determining the amount of the forfeiture, the child care administrative agency or department shall identify a specific date relating to a specific child and may consider the following factors:

1. Seriousness of the violation.



2. Extent of the violation.
3. History of prior violations.
4. Prior imposition of penalties.
5. Provider willingness to obey program rules.

(cr) *Licensing or certification violations.* If the department or a certification agency has given notice to a provider that the provider is in violation of applicable licensing or certification rules under chapters DCF 202, 250, 251, or 252 and the provider has not corrected the violation, the department or child care administrative agency may refuse to issue new child care authorizations, revoke existing child care authorizations, or refuse to issue payments until the provider has corrected the violation and demonstrated sufficient controls to ensure that the violation or comparable violations are unlikely to occur again.

**SECTION 11. DCF 201. 04 (5) (d) and (e) are amended to read:**

**DCF 201. 04 (5) (d)** *Notice to parent.* ~~When~~ If the department or a child care administrative agency refuses to issue new authorizations, revokes existing authorizations, or refuses to issue payments to a provider under par. (c) ~~or (cr)~~, the child care administrative agency or the department shall provide written notice to the parent as soon as possible before the effective date of the ~~sanction~~ penalty.

(e) *Offset from funds payable to continuing provider.* If ~~the~~ a provider has not repaid an overpayment, the child care administrative agency or department may recover the overpayment by making an offset from current or future funds under its control that are payable to the provider of no more than 50% percent of each payment if the provider is expected to continue to care for children whose care is subsidized under s. 49.155, Stats.

**SECTION 12. DCF 201. 04 (5) (ed), (eh), (ep), and (et) are created to read:**

**DCF 201. 04 (5) (ed)** *Offset from funds payable to provider who is not continuing.* If a provider or former provider has not repaid an overpayment and the provider or former provider is not expected to continue to care for children whose care is subsidized under s. 49.155, Stats, the child care administrative agency or department may recover the overpayment by making an offset from 100 percent of funds under its control that are payable to the provider or former provider.

(eh) *Warrant and execution under section 49.195 (3m), Stats.* 1. 'Creation of lien.'

a. If the department does not receive a debtor's payment on a debt for repayment of an overpayment by the due date 3 times over the life of a debt, the debt shall be considered delinquent. If a debt is delinquent and no review or appeal rights under s. DCF 201.07 are pending and the time for requesting a review has expired, the department may issue a warrant directed to the clerk of circuit court of any county.

b. The clerk of circuit court shall enter in the judgment and lien docket the name of the debtor named in the warrant, the amount for which the warrant is issued, and the date on which the clerk entered the information.

c. The department shall pay the fees required under s. 814.61 (5), Stats., for entering the warrant and shall collect the fees from the debtor named in the warrant when satisfaction or release is presented for entry.

d. A warrant issued under subd. 2. b. shall be considered in all respects a final judgment constituting a perfected lien upon the debtor's right, title, and interest in all real and personal property located in the county in which the warrant is entered.

e. The department shall provide the debtor with notice and an opportunity for a hearing under ch. 227, Stats., when a warrant has been issued. The debtor may request a hearing under ch. 227, Stats., within 20 days from the date on the notice. The appeal shall be limited to questions of prior payment of the debt that the department is proceeding against and mistaken identity of the debtor. The department may not withdraw a warrant based on a request for hearing.

2. 'Execution of the warrant.' a. After the warrant is issued and no review or appeal rights under subd. 1. e. are pending and the time for requesting a review has expired, the department may file an execution with the clerk of circuit court for filing with the sheriff of the county, commanding the sheriff to execute the warrant and sell sufficient real and personal property of the debtor to pay the amount stated in the warrant in the same manner as upon an execution against property issued upon the judgment of a court of record, and to return the warrant to the department and pay to it the money collected by virtue of the warrant within 90 days after receipt of the warrant. The execution may not command the sheriff to levy upon or sell any property that is exempt from execution under ss. 815.18 (3) and 815.20 , Stats.

b. The department shall provide the debtor with notice and an opportunity for a hearing under ch. 227, Stats., before property is seized. The debtor may request a hearing under ch. 227, Stats., within 20 days from the date on the notice. The appeal shall be limited to questions of prior payment of the debt that the department is proceeding against and mistaken identity of the debtor. The department may not cease enforcement or seizure based on a request for hearing.

c. The department shall provide the debtor with notice and an opportunity for a hearing under ch. 227, Stats., before seized property is sold. The debtor may request a hearing under ch. 227, Stats., within 20 days from the date on the notice. The appeal shall be limited to questions of prior payment of the debt that the department is proceeding against and mistaken identity of the debtor. If a hearing is requested, the department shall notify the sheriff that seized property may not be sold before the hearing decision is issued or the hearing request is withdrawn.

3. 'Satisfaction of the warrant.' When the amount set forth in the warrant and all costs due the department have been paid to it, the department shall issue a satisfaction of the warrant and file it with the clerk of circuit court. The clerk of circuit court shall immediately enter a satisfaction of the judgment on the judgment and lien docket. The department shall send a copy of the satisfaction to the person named in the warrant.

(ep) *Levy under section 49.195 (3n), Stats.* 1. 'Definition.' In this paragraph, "personal property" means all tangible and intangible property and rights to such property that is not real estate, including compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus or otherwise; periodic payments received pursuant to a pension or retirement program; rents; proceeds of insurance; contract payments; stock and bonds; and accounts in financial institutions.

2. 'Notice prior to levy.' a. If the department does not receive a debtor's payment on a debt for repayment of an overpayment by the due date 3 times over the life of a debt, the debt shall be considered delinquent. If a debt is delinquent and no review or appeal rights under s. DCF 201.07 are pending and the time for requesting a review has expired,

the department shall give notice to the debtor that the department may pursue legal action for collection of the debt.

b. The department shall make the demand for payment and give notice to the debtor at least 10 days prior to the levy, personally or by any type of mail service that requires a signature of acceptance, at the address of the debtor as it appears on the records of the department. The demand for payment and notice shall include a statement of the amount of the debt, including interest and penalties, and the name of the debtor who is liable for the debt.

c. The debtor's refusal or failure to accept or receive the notice does not prevent the department from making the levy.

d. Notice prior to levy is not required for a subsequent levy on any debt of the same debtor within one year of the date of service of the original levy.

3. 'Service of levy and review when property levied.' a. The department may collect the debt and the expenses of the levy by levy upon any personal property belonging to the debtor.

b. The department shall serve the levy upon the debtor and any 3rd party in possession of or obligated with respect to property or rights to property that is subject to levy by personal service or by any type of mail service that requires a signature of acceptance as provided in s. 49.195 (3n) (m), Stats. The debtor or 3rd party's failure to accept or receive service of the levy does not invalidate the levy.

c. Any debtor who is subject to a levy proceeding made by the department has the right to appeal the levy proceeding under ch. 227, Stats., within 20 days from the date on the service of levy. The appeal shall be limited to questions of prior payment of the debt

that the department is proceeding against and mistaken identity of the debtor. The levy is not stayed pending an appeal where property is secured through the levy.

4. 'Third-party response.' a. Within 20 days from the service of the levy upon a 3rd party, the 3rd party shall file an answer with the department stating whether the 3rd party is in possession of or obligated with respect to property or rights to property of the debtor, including a description of the property or the rights to property and the nature and dollar amount of any such obligation.

b. Any person in possession of or obligated with respect to personal property or rights to personal property that is subject to levy and upon which a levy has been made shall, upon demand of the department, surrender the personal property or rights or discharge the obligation to the department, except that part of the personal property or rights which is, at the time of the demand, subject to any prior attachment or execution under any judicial process.

5. 'Appeal rights before surrendered property is sold.' If levied personal property that has been surrendered to the department is not a liquid asset in the form of cash, check, or an equivalent that can be applied to the debt without a sale of the asset, the department shall provide the debtor with notice and an opportunity for a hearing under ch. 227, Stats., before surrendered property is sold. The debtor may request a hearing under ch. 227, Stats., within 20 days from the date on the notice. The appeal shall be limited to questions of prior payment of the debt that the department is proceeding against and mistaken identity of the debtor. If a hearing is requested, surrendered property may not be sold before the hearing decision is issued or the hearing request is withdrawn.

6. 'Exemption rights.' a. The debtor is entitled to an exemption from levy of the greater of a subsistence allowance of 75% of the debtor's disposable earnings then due and owing, an amount equal to 30 times the federal minimum hourly wage for each full week of the debtor's pay period, an amount equal to 60 times the federal minimum hourly wage for a two-week pay period, or an amount equal to 130 times the federal minimum hourly wage for a monthly pay period.

b. The first \$1,000 of an account in a depository institution is exempt from any levy to recover an overpayment.

7. 'Proceeds.' a. The department shall apply all money obtained under this paragraph first against the expenses of the proceedings and then against the liability for which the levy was made and any other liability owed to the department by the debtor.

b. Whenever the value of any personal property that has been levied upon under this paragraph is not sufficient to satisfy the claim of the department, the department may levy upon any additional personal property of the debtor until the debt and expenses of the levy are fully paid.

c. The department may refund or credit any amount left after the applications under subd. 7.a., upon submission of a claim for that amount and satisfactory proof of the claim, to the person entitled to that amount.

(et) *Threshold for warrant and execution and levy.* The minimum amount that must be due before collection proceedings under par. (eh) or (ep) may be commenced is \$300.

**SECTION 13. DCF 201. 04 (5) (f) is amended to read:**

**DCF 201. 04 (5) (f) Parent not liable.** If the department refuses to issue payment based on a provider's violation of a requirement in this chapter, the provider may not

hold the parent liable for payment other than the copayment and any amount that the parent agreed to above the department's maximum reimbursement rate if the parent relied on an approved authorization for care for his or her child to receive care from the provider.

**SECTION 14. DCF 201. 04 (5) (g) is created to read:**

**DCF 201. 04 (5) (g) Waiver.** The department may waive recovery of an overpayment under this subsection if the department has made reasonable efforts to recover the overpayment and determines it is no longer cost effective to continue overpayment recovery efforts.

**SECTION 15. DCF 201. 07 (1) (e) is amended to read:**

**DCF 201.07 (1) (e)** Collection of an overpayment, including the determination of the amount of the overpayment, the determination of the amount of the overpayment still owed, warrant and execution under (eh), levy under par. (ep), or a decision under s. 49.85, Stats., to recover the overpayment by means of certification to the Wisconsin department of revenue. The provider may make only one request for appeal of the basis for the overpayment claim. Any subsequent appeals shall be limited to questions of prior payment of the debt that the department or agency is proceeding against or mistaken identity of the debtor.

**SECTION 16. DCF 201. 07 (1) (f) is created to read:**

**DCF 201. 07 (1) (f)** Issuance of a forfeiture.



**SECTION 17. EFFECTIVE DATE.** This rule shall take effect upon publication as provided in s. 227.24 (1) (c), Stats.