

Clearinghouse Rule 08-009



State of Wisconsin
Department of Workforce Development
Division of Family Supports

CHILD CARE RATES

DWD 56.06 (1)

The Wisconsin Department of Workforce Development proposes to amend s. DWD 56.06 (1) (a) 1. and to create s. DWD 56.06 (1) (a) 1.r., relating to child care rates.

Analysis Prepared by the Department of Workforce Development

Statutory authority: Sections 49.155 (6) and 227.11 (2), 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 proposed 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 under s. DWD 56.06 (1) (a) 1.

Prior to 2007, the adjusted rates based on the annual survey have generally become effective January 1 of the new year. The child care rates were not adjusted in January 2007 due to a projected SFY 2007 budget shortfall.

2007 Wisconsin Act 20 reflects that the child care rates will not be increased for the 2008-2009 biennium. This rule provides that the rates will not be adjusted for 2008 and 2009, and the rates effective on December 31, 2006, will remain in effect. A corresponding emergency rule that was effective January 1, 2008, provides that rates will not be increased for 2008.

Summary of factual data and analytical methodologies. The Governor's proposed child care budget included numerous cost containment strategies, including the rate freeze. (Legislative Fiscal Bureau Budget Paper #891, May 22, 2007) The Legislature added \$65 million to the child care budget above the Governor's proposal and deleted or modified many of the Governor's other cost containment proposals. The freeze on child care rates was not changed and is included in 2007 Wisconsin Act 20.

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 75th 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 2007 study by the National Women's Law Center, entitled *State Child Care Assistance Policies 2007: Some Steps Forward, More Progress Needed* compared state 2007 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 75th percentile of the market rate in 2007 and one of 22 states that had reimbursement rates at or above the 75th percentile of the market rate in 2001.

Michigan. Reimbursement rates have not been increased since 1997. Rates in 2007 were at the 75th percentile of 1996 market rates. In Wayne County, the percentage difference between the state rate and the 75th 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 2007 rate and the 75th percentile of the market rate was -9% for center care of a 4-year-old and -10% for care of a one-year-old.

Illinois. In Cook County, the percentage difference between the state 2007 rate and the 75th percentile of the market rate was -35% for center care of a 4-year-old and -28% for care of a one-year-old.

Iowa. The percentage difference between the statewide 2006 rate and the 75th percentile of the market rate was -10% for center care of a 4-year-old and -7% for care of a one-year-old.

The National Women's Law Center study *State Child Care Assistance Policies 2007: Some Steps Forward, More Progress Needed* is available at <http://www.nwlc.org/pdf/StateChildCareAssistancePoliciesReport07web.pdf>.

Effect on small business. The emergency and permanent rules are merely implementing the policy and funding provided for the child care subsidy program in 2007 Wisconsin Act 20. The policy of freezing child care rates does not have a significant economic impact on small businesses that are child care providers statewide. Due to interest expressed in the impact of freezing child care rates by the Small Business Regulatory Review Board in 2007, the Department is submitting an analysis of the 2008 rules implementing the rate freeze for review under s. 227.14 (2g), Stats.

Analysis used to determine effect on small businesses. The funding provided for the child care subsidy program under 2007 Wisconsin Act 20 is based on the assumption that child care rates will not be increased for the 2008-2009 biennium.

The child care subsidy represents an estimated 21 percent of child care revenues received by child care providers. In state fiscal year 2008, the estimated cost avoidance of not increasing rates is \$14.2 million, which is 4.2% of program funding. This is a .9% total impact in lost revenue growth to child care providers statewide. In state fiscal year 2009, the estimated cost avoidance of not increasing rates is \$21.3 million, which is 6.0% of program funding. This is a 1.3% total impact in lost revenue growth to child care providers statewide.

Further analysis of the effect of freezing rates on certain regions of the state may be found in the Department's submission to the Small Business Regulatory Review Board. This document may be obtained from the <http://adminrules.wisconsin.gov> web site or by contacting Elaine Pridgen, DWD Small Business Regulatory Coordinator, at elaine.pridgen@dwd.state.wi.us or (608) 267-9403.

Fiscal effect. 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 latest 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 \$14,200,000 in avoided costs in direct child care subsidies on a full-year annualized basis for State Fiscal Year 2008 and \$21,300,000 in avoided costs for State Fiscal Year 2009, but current-year appropriations are still anticipated to be fully expended.

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Place where comments are to be submitted and deadline for submission.

Comments may be submitted to Elaine Pridgen, Office of Legal Counsel, Dept. of Workforce Development, P.O. Box 7946, Madison, WI 53707-7946; fax (608) 266-1784, or elaine.pridgen@dwd.state.wi.us. The comment deadline is March 11, 2008.

SECTION 1. DWD 56.06 (1) (a) 1. is amended to read:

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

ESTABLISHMENT OF MAXIMUM RATES. (a) *Responsibility*. 1. Except as provided in subd. 1m., 1r., 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) 1r. is created to read:

DWD 56.06 (1) (a) 1r. Notwithstanding subd. 1., the department shall set child care rates for the years 2008 and 2009 to be the same as the rates in effect on December 31, 2006.

SECTION 3. EFFECTIVE DATE. This rule shall take effect the first day of the month following publication in the Administrative Register as provided in s. 227.22 (2) (intro.), Stats.