



**State of Wisconsin
Clearinghouse Rule 08-035**

**Department of Workforce Development
Division of Family Supports**

Child Care Enrollment Underutilization

DWD 56.04

The Wisconsin Department of Workforce Development proposed to amend ss. DWD 56.04 (1) (a) 1., (2) (a) 1. b., and (5) (c); and to repeal and recreate s. DWD 56.04 (2) (d), relating to child care enrollment underutilization and affecting small businesses.

Analysis Prepared by the Department of Workforce Development

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

Statutes interpreted: Section 49.155, Stats.

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

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

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

- The agency may authorize payment to licensed providers based on units of service used by each child up to the maximum number of authorized units, with the reimbursement rate increased by 10% to account for absent days, if the schedule of child care to be used is expected to vary widely.
- The agency may authorize payment to licensed providers based on units of service used by each child, up to the maximum number of authorized units, if the agency has documented 3 separate occasions where the provider significantly overreported the attendance of a child.

The current methodology for authorizing payment to licensed providers has caused the child care subsidy program to pay for significant amounts of time when care is not actually being provided. The proposed rule attempts to control costs by reducing payments to licensed child care providers for authorized child

care services that are significantly underused. The proposed rule will repeal the presumption of enrollment authorization for licensed providers and provides that a local child care administrative agency shall authorize on either an enrollment or attendance basis as follows:

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

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

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

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

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

A corresponding emergency rule implemented these policies effective March 30, 2008.

Summary of factual data and analytical methodologies. The Department has reestimated the potential current year deficit in the child care subsidy program to be slightly less than the estimate from February (which was included with the emergency rule filed on March 18th). In the intervening 2 1/2 months, based on additional weeks of actual subsidy expenditures we have seen a slight decrease in costs and are now projecting a State Fiscal Year deficit of \$16.2 million. This reduction, while meaningful as a \$2.4 million decrease to the deficit, represents a change of less than 1.0% (0.7%) of the total projected subsidy expenditures for the fiscal year.

Due to this projected budget shortfall, the Department is reinstating the child care enrollment underutilization policy that was in effect April to October 2007. The underutilization policy was implemented in response to a significant 06-07 budget shortfall and was withdrawn in October 2007 upon passage of 2007 Wisconsin Act 20, although Act 20 does not affect the Department's authority for the policy. The *Legislative Fiscal Bureau: Summary of Budget Provisions* states "DWD will be permitted to continue the attendance-based policy and to modify recipients' co-payments, as under prior law." (page 589, <http://www.legis.state.wi.us/lfb/2007-09budget/Act%2020/dwd.pdf>)

By paying the hourly rate for actual attendance to child care providers when attendance is under 50% of the authorized level for the child care subsidy program, the Department will avoid paying for significant amounts of time where care is not actually being provided. The Department has revised the estimate of annual savings from implementing the child care enrollment underutilization policy. This revised savings estimate reflects further analysis of the interaction of other child care payment policies on the proposed underutilization policy. Based on adjustments for these interactions, when comparing the amount currently paid for enrollment authorizations against the amount that would be paid if underutilized authorizations of 50% or less are paid for actual hours of care, the Department is revising the estimate of annual savings from \$18.5 million to \$13.0 million.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. If the need for care is anticipated to vary from week to week or if the child has a history of variable attendance, the agency shall authorize payment based on the number of hours of actual attendance used by the child, up to the maximum authorized hours.

The hourly rate for attendance-based authorizations shall be 10% higher than the reimbursement rate established under s. DWD 56.06.

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

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

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

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

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

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

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

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

2. Revoke existing child care authorizations to the provider.

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

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

SECTION 4. EFFECTIVE DATE. This rule shall take effect the first day of the month following publication in the Administrative Register as provided in s. 227.22 (2) (intro.), Stats.