



## Clearinghouse Rule 17-066

### State of Wisconsin Department of Children and Families

#### DCF 101

#### Sanctions in the Wisconsin Works Program

The Wisconsin Department of Children and Families proposes an order to repeal and recreate s. DCF 101.21 and to create s. DCF 101.195, relating to sanctions in the Wisconsin works program.

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

**Statutory authority:** Sections 49.1515 (1) and 49.153 (2), Stats.

**Statutes interpreted:** Sections 49.151 (1m) (a) to (f) and 49.153 (1) and (1m), Stats.

**Related statute or rule:** Sections 49.141 to 49.161, Stats., and ch. DCF 101

#### Explanation of Agency Authority

Section 49.1515 (1), Stats., as created by 2009 Wisconsin Act 28 and affected by 2015 Wisconsin Act 55, provides that the department shall by rule specify guidelines for determining when a Wisconsin works participant, or a second parent in the participant's Wisconsin works group who is subject to a work requirement, is demonstrating a refusal to participate in the Wisconsin works program.

Section 49.151 (1c) and (1m), Stats., as affected by 2015 Wisconsin Act 55, provides that a participant who refuses to participate as determined under guidelines promulgated by the department under s. 49.1515 (1), Stats., in any Wisconsin works employment position is ineligible to participate in the Wisconsin works program for 3 months. A participant is also ineligible if a second parent who is required to work under the 2-parent family requirement in s. 49.15 (2), Stats., refuses to participate as required. A participant or a second parent who is required to work refuses to participate if the participant or second parent, without good cause:

- Fails to appear for an interview with a prospective employer,
- Fails to appear for an assigned work activity,
- Voluntarily leaves appropriate employment or training, or
- Voluntarily leaves a work experience site.

The participant or a second parent who is required to work also refuses to participate if the participant or second parent:

- Is discharged from appropriate employment or training for cause,
- Is discharged from a work experience site for cause, or
- Demonstrates through other behavior or action, as specified by the department by rule, that the participant or second parent refuses to participate in a Wisconsin works employment position.

Section 49.153 (1), Stats., as affected by 2015 Wisconsin Act 55, provides that before taking any action against a participant that would result in a 20 percent or more reduction in the participant's benefits or in termination of the participant's eligibility to participate in the Wisconsin works program, a Wisconsin works agency shall do all of the following:

(a) Provide to the participant written notice of the proposed action and of the reasons for the proposed action.

(c) After providing the notice under par. (a), allow the participant a reasonable time to rectify the deficiency, failure, or other behavior to avoid the proposed action.

Section 49.153 (1m), Stats., as created by 2015 Wisconsin Act 55, provides that a Wisconsin works agency is not required to comply with the notice requirements under sub. (1) if the action taken is the result of the participant no longer meeting eligibility criteria as specified under s. 49.145 (2) (a), (b), (c), (d), (g), (i), (j), (m), (q), (r), or (rm) or (3), Stats.

Section 49.153 (2), Stats., as created by 2005 Wisconsin Act 25 and affected by 2011 Wisconsin Act 32, provides that the department shall promulgate rules that establish procedures for the notice under sub. (1) (a) and that define "reasonable time" for the purpose of sub. (1) (c).

### **Summary of the Proposed Rules**

#### **DCF 101.195, Notice before Taking Certain Actions**

The proposed s. DCF 101.195 describes the notice that must be provided to Wisconsin works program participants prior to taking action to reduce benefits of 20 percent or more or to terminate eligibility to participate in the Wisconsin works program and provides a definition of the "reasonable time" participants must be allowed to rectify the deficiency, failure, or behavior in order to avoid the proposed action.

#### **DCF 101.21, Refusal to Participate**

The proposed s. DCF 101.21 provides guidelines for determining when a participant, or second parent in the participant's Wisconsin works group, who engages in behavior specified in s. 49.151 (1m) (a), (b), (c), (d), (e), or (f), Stats., is demonstrating a refusal to participate. The proposed s. DCF 101.21 (1) (d) defines other behavior or action by the participant or second parent that demonstrates a refusal to participate in a Wisconsin works employment position under s. 49.151 (1m) (f), Stats.

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

The rules were developed with the assistance of the Wisconsin works agencies administering the Wisconsin works program under the department's 2013-2016 contracts.

Agencies offered examples and definitions of behaviors under the control of the participant or individual that agencies have observed that demonstrate a refusal to participate in program activities designed to prepare the participant or individual for employment.

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

45 CFR §261.10 provides that a “parent or caretaker receiving assistance must engage in work activities when the State has determined that the individual is ready to engage in work or when he or she has received assistance for a total of 24 months, whichever is earlier.” 45 CFR §261.14 provides that “if an individual refuses to engage in work required under section 407 of the [Social Security] Act, the State must reduce or terminate the amount of assistance payable to the family, subject to any good cause or other exceptions the State may establish.” The State is required, at a minimum, to “reduce the amount of assistance otherwise payable to the family pro rata with respect to any period during the month in which the individual refuses to work”, and it “may impose a greater reduction, including terminating assistance.” That section further provides that “a State that fails to impose penalties on individuals in accordance with the provisions of section 407(e) of the Act may be subject to the State penalty specified at §261.54.” The referenced penalty in §261.54 is “between one and five percent of the adjusted SFAG [State Family Assistance Grant].” In Wisconsin, this penalty would equal between \$2,356,736 and \$11,783,680.

In addition to requiring States to impose a penalty on individuals who refuse to engage in work, the federal regulations also require states to meet performance standards for the percentage of total families and of two-parent families that are engaged in work. These standards are designed to hold states accountable for complying with the work requirements, and they measure a state’s “success in requiring work-eligible individuals to participate in work activities.” 45 CFR §261.20 (b). Penalizing individuals who refuse to work is required in order for a state to meet the work participation rate.

States that meet the work participation rate are rewarded by a decrease from 80% to 75% of the “historic state expenditures” it is required to maintain under Temporary Assistance for Needy Families (TANF). States that do not meet the work participation rate may also be subject to a base penalty of 5% of the adjusted SFAG, the amount of the basic TANF block grant allocated to each eligible State. If a state remains out of compliance, an additional 2% is added to the base penalty for each consecutive year of noncompliance thereafter up to a total penalty of 21% of the adjusted SFAG. 45 CFR §261.50.

The work participation rate generally measures the percentage of families with a work-eligible individual that “participates in work activities during the month for at least a minimum average of 30 hours per week.” 45 CFR §261.31. There is a lower 20 hour per week requirement for families with a child under age 6. While a state can improve its rate through good case management decisions in assigning appropriate activities and by offering a robust array of high quality activities that are countable, it must also impose a penalty on individuals who refuse to participate in assigned activities without good cause. For the first time, Wisconsin did not meet the work participation rate in Federal fiscal year 2012, and to avoid imposition of the 5% penalty, it proposed a corrective action plan to come into compliance. One of the requirements of the corrective action plan is that Wisconsin will make stronger efforts to require work-eligible

individuals to engage in work. The proposed modifications to these rules are a key part of the State's compliance efforts.

### **Comparison to Rules in Adjacent States**

Illinois has rules for its TANF program that require clients to create a personal Responsibility and Services Plan (RSP), and parents who refuse to complete the RSP render the entire assistance unit ineligible. A client who fails to follow up in taking the actions in the RSP is subject to sanction. Illinois has a rule that defines participation and cooperation requirements for the program and provides "Cooperation with TANF is defined as providing requested information about employment history and capabilities, appearing for scheduled meetings, participating in assessments and complying with the requirements of the TANF activities" identified in rule. Sanctions are imposed for failure to participate with the TANF employment and work activity requirements. Refusal to participate in TANF employment and work activities makes the case ineligible if the person refusing to participate is required to be in the assistance unit. The penalties generally for failure to participate include a 50% reduction in benefits for 3 months and termination of benefits if the individual does not cooperate after 3 months for the first and second instance of non-cooperation. For the third and any subsequent instance of non-cooperation the assistance unit loses benefits for a minimum of 3 months with benefits reinstated only if the cooperation requirement is met during the 3-month sanction period. The rule relating to sanctions indicates a sanction will be imposed for one instance of the following without good cause unless reconciliation is successful: failure to respond to a job referral, failure to accept a bona fide offer of employment, discontinuing part-time employment, reducing employment, failure to participate in an activity, failure to respond to a written notice for a meeting, failure to make the required number of acceptable employer contacts, failure to accept services, and failure to provide verification of activities. The reconciliation process in Illinois's rules allows a client to enter into a reconciliation agreement and provides a 30-day opportunity to demonstrate cooperation with the reconciliation agreement before a sanction is imposed. For second and subsequent instances of non-cooperation, the client must comply with the reconciliation agreement immediately, or the sanction is imposed.

Iowa's Family Investment Program has rules similar to those proposed by the department that require clients to cooperate in quality control reviews, to cooperate in removing or managing barriers to employment, to complete assessments, to participate in job club activities, to participate in individual job search, and to participate in treatment or other rehabilitative activities, and participants who fail to participate or cooperate without good cause are penalized by a reduction in benefits. Similarly, a participant who does not maintain employment without good cause, fails to participate in on-the-job-training opportunities or work experience activities, fails to participate in unpaid community service, or fails to participate in education or training activities is penalized by a reduction in benefits.

Michigan's rules for its Family Independence Program establish penalties for failure to participate in employment-related or family self-sufficiency activities without good cause. These penalties are a 3-month disqualification for the assistance group for one incident of non-compliance, a 6-month disqualification for being non-compliant two times, and permanent disqualification for being non-compliant three times.

Minnesota's sanctions for failure to participate are contained in statute, not in administrative rule. The statutes define failure to comply without good cause with the statutory provisions governing the Minnesota Family Investment Program as being subject to sanction. Specific grounds for sanctions in the statutes include: failure to attend orientation (256J.45); failure to attend the overview of employment and training services (256J.515); failure to complete mental and chemical health screening (256J.521); failure to develop or comply with activities in the plan or voluntarily quitting suitable employment (256J.521); and failure to participate in employment services, including the requirement to develop and comply with an employment plan, including hourly requirements (256J.55). The sanctions contained in the statutory provisions include a 10% reduction in benefit levels for the first occurrence of noncompliance, conversion of the benefit to a vendor payment for housing for the second through sixth occurrences, and case closure for the seventh occurrence. Following case closure, a former participant may reapply for benefits, but benefits are not paid until the participant has demonstrated compliance for up to one month. Minnesota's statutes also create a conciliation process (256J.57) which can be requested by a participant. The agency must conduct the conciliation conference within five days of a timely request, and if the conciliation conference resolves the noncompliance, the sanction notice is withdrawn.

### **Effect on Small Business**

None. The proposed rules impose no compliance or reporting requirements on small businesses.

### **Analysis Used to Determine Effect on Small Business or in Preparation of Economic Impact Analysis**

The impact of these proposed rules is limited to agencies administering the Wisconsin works program and families and individuals participating in that program. No Wisconsin works agency is an independently owned and operated business entity with fewer than 25 employees or less than \$5,000,000 in gross annual sales as defined in s. 227.114 (1), Stats. The primary impacts of the proposed rules are on participants in Wisconsin works employment positions and individuals in the participant's Wisconsin works group who are subject to work requirements under the program.

### **Agency Contact Person**

Margaret McMahon, Director, Bureau of Working Families, Division of Family and Economic Security, Department of Children and Families, (608) 422-6273, [margaret.mcmahon@wisconsin.gov](mailto:margaret.mcmahon@wisconsin.gov).

### **Place Where Comments are to be Submitted and Deadline for Submission**

Comments may be submitted to Debra Cronmiller, Bureau of Working Families, Division of Family and Economic Security, Department of Children and Families, 201 E. Washington Avenue, Madison, WI 53708, or [dcfpublichearing@wisconsin.gov](mailto:dcfpublichearing@wisconsin.gov). The comment deadline is October 26, 2017.

**SECTION 1. DCF 101.195 is created to read:**

**DCF 101.195 Notice before taking certain actions.** (1) TWENTY PERCENT OR MORE REDUCTION. Before a Wisconsin works agency may take any action that would result in a 20 percent or more reduction in a participant's benefits due to nonparticipation with Wisconsin works program requirements, the Wisconsin works agency shall issue a written notice to the participant. The notice shall be issued no later than 5 business days following the department's notification to the Wisconsin works agency of participants subject to a potential 20 percent or more payment reduction. The notice shall contain all of the following information:

- (a) The dates of nonparticipation.
- (b) A description of the activities missed.
- (c) The number of hours missed on the dates of nonparticipation.
- (d) The amount to be deducted from the benefit for each hour of nonparticipation.

(2) TERMINATION. Before taking any action that would result in termination of a participant's eligibility to participate in Wisconsin works, a Wisconsin works agency shall issue a written notice to the participant. The notice shall include a description of the deficiency, failure, or other behavior that has resulted in the termination of eligibility.

(3) REASONABLE TIME TO RECTIFY. (a) For purposes of this subsection, "reasonable time" means within 7 business days after the date of the written notice issued by the Wisconsin works agency under sub. (1) or (2).

(b) A participant who believes the Wisconsin works agency's decision to reduce benefits or terminate eligibility is in error may, within a reasonable time, provide the Wisconsin works agency with a good cause reason for the deficiency, failure or other behavior to avoid the reduction of benefits or termination of eligibility.

(c) If the Wisconsin works agency determines the participant had good cause under s. DCF 101.20, the Wisconsin works agency shall take action to restore the participant's benefits or eligibility.

(d) If the participant does not provide the Wisconsin works agency with a good cause reason within a reasonable time or if the Wisconsin works agency determines the participant did not have good cause under s. DCF 101.20, the Wisconsin works agency shall proceed with the proposed action to reduce benefits or terminate eligibility.

**SECTION 2. DCF 101.21 (1) is repealed and recreated to read:**

**DCF 101.21 Sanctions. (1) REFUSAL TO PARTICIPATE.** (a) In this section:

1. "Appropriate" means consistent with an individual's employability plan.
2. "Employer" means a person, entity, or Wisconsin works agency that provides employment for an individual.
3. "Employment" means work, work experience, meetings, or training assigned to an individual.
4. "Individual" means a participant in a Wisconsin works employment position or a second parent in the participant's Wisconsin works group who is subject to a work requirement under s. DCF 101.27.
5. "Misconduct" means one or more actions or conduct evincing such willful or wanton disregard of an employer's interests as is found in deliberate violations or disregard of standards of behavior which an employer has a right to expect of its employees, or in carelessness or negligence of such degree or recurrence as to manifest culpability, wrongful intent, or evil design of equal severity to such disregard, or to show an intentional and substantial disregard of an

employer's interests, or of an employee's duties and obligations to an employer. In addition, "misconduct" includes all of the following:

a. A violation by an individual of an employer's reasonable written policies concerning the use of alcohol beverages, controlled substances as specified under s. 961.01(4), Stats., or controlled substance analogs specified under s. 961.01 (4m), Stats.

b. Theft of an employer's property or services with intent to deprive the employer of the property or services permanently, theft of currency of any value, felonious conduct connected with an individual's employment with an employer, or intentional or negligent conduct by an individual that causes substantial damage to an employer's property.

c. Conviction of an individual of a crime or other offense subject to civil forfeiture, while on or off duty, if the individual is unable to perform the duties that the individual performs for an employer due to the conviction.

d. One or more threats or acts of harassment, assault, or other physical violence by an individual at an employment site.

e. Use of profane or abusive language directed towards staff or others at an employment site.

6. "Participation period" means the 16<sup>th</sup> of one month to the 15<sup>th</sup> of the next month.

7. "Training" means education or training assigned by the Wisconsin works agency under s. 49.147 (3) (am), (4) (am), or (5) (bm), Stats.

(b) A Wisconsin works agency shall provide to each individual in the program a written description of the following:

1. The individual's obligation to participate in assigned activities.

2. The actions under par. (c) that demonstrate a refusal to participate.

3. The individual's ineligibility to participate in the Wisconsin works program for 3 months if an individual in the Wisconsin works group demonstrates a refusal to participate.

(c) An individual demonstrates a refusal to participate if the individual does any of the following:

1. Is discharged from employment for misconduct or engages in misconduct on the premises of an employer.

2. Fails to appear or appears more than 15 minutes after the scheduled start time of an interview with a prospective employer, a job fair or a meeting with a prospective employer that was arranged by the Wisconsin works agency.

3. Leaves an interview or a meeting with a prospective employer prior to the conclusion of the interview or meeting.

4. Appears for an interview or a meeting with a prospective employer wearing inappropriate attire or exhibiting inappropriate grooming after receiving written or oral directions or training on appropriate attire and grooming.

5. Fails to complete a job application required by a prospective employer.

6. Communicates to a prospective employer a requirement for salary, hours of employment, or working conditions that disqualifies the individual from employment with that employer.

7. Provides incorrect or incomplete information regarding employment qualifications in an interview or job application that disqualifies the individual from employment with the prospective employer after receiving written or oral directions or training from the Wisconsin works agency regarding interviewing and filling out employment applications.

8. Voluntarily leaves appropriate employment or refuses a bona fide offer of appropriate employment.

9. Is a member of a Wisconsin works group whose benefit has been reduced by 20 percent or more under s. 49.148 (1) (b) or (c), Stats., for 2 consecutive participation periods or for 3 non-consecutive participation periods in a rolling 6-month period.

10. Refuses or fails to follow a verbal or written direction from Wisconsin works agency staff or staff at an employment site.

11. Uses vulgar or profane language or engages in abusive behavior directed towards staff or others in the Wisconsin works agency or employment site.

12. Violates written work rules developed by the employer, if the work rules were provided to the individual and there is a signed acknowledgement of receipt of the work rules in the individual's case record.

(d) Notwithstanding par. (c) (intro.), an individual who does any of the actions specified in par. (c) 1. to 12. does not demonstrate a refusal to participate if the Wisconsin works agency determines that the individual has good cause under s. DCF 101.20.

**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.