

State of Wisconsin
Department of Workforce Development
Chapter DWD 56
ADMINISTRATION OF CHILD CARE FUNDS

The Wisconsin Department of Workforce Development proposes an order to repeal ss. DWD 56.04(1), 56.04(4)(a), and 56.05(5); to renumber ss. DWD 56.02(7), 56.02(20), 56.02(21), 56.02(22), 56.02(23), 56.02(24), 56.02(25), 56.04(5), and 56.05(4); to renumber and amend ss. 56.04(3), 56.04(2)(d)3., 56.04(4)(b), 56.04(4)(c), 56.04(4)(d), 56.04(4)(e), 56.04(6), and 56.04(7); to amend ss. DWD 56.01, 56.02(4), 56.02(11), 56.02(12), 56.02(13), 56.02(15)(note), 56.02(21), 56.03(title), 56.04(5)(d), 56.05(1), 56.06(1)(b), 56.06(1)(c)2., 56.06(2)(a)2., 56.06(2)(b)1., 56.06(2)(d), 56.08(1)(note), 56.08(3)(a)5.; to repeal and recreate ss. DWD 56.02(3), 56.02(15), 56.04(title), 56.04(5)(c)1., 56.04(5)(c)2., and 56.04(5)(c)3.; to create ss. DWD 56.02(7), 56.02(14), 56.02(20), 56.04(2)(b), 56.04(2)(d)1.b., 56.04(2)(e), 56.04(2)(f), 56.04(2)(g), 56.04(2)(h), 56.04(2)(i), 56.04(5)(e), 56.04(5)(f), 56.04(6), 56.04(7)(e), 56.04(8), 56.045(title), 56.05(2), 56.05(4)(b), 56.06(1)(c)3., 56.06(1)(c)4., 56.07, and 56.08(3)(a)6., relating to the administration of child care funds.

Analysis Prepared by the Department of Workforce Development

Statutory authority: Sections 49.155, excluding subs. (1d) and (1g), and 227.11, Stats.

Statute interpreted: Section 49.155, excluding subs. (1d) and (1g), Stats.

The proposed rules affect the administration of child care funds for the child care subsidy program under s. 49.155, excluding subs. (1d) and (1g), Stats.

Creation of more precise categories for maximum reimbursement rates. Maximum reimbursement rates to child care providers are determined by surveying licensed providers to determine the prices they charge to parents paying out of their personal funds and setting maximum rates under the child care subsidy program so that at least 75 percent of the slots in each county can be purchased at or below the maximum reimbursement rate. Currently maximum rates are set based on a survey of licensed providers' prices for children in two categories, ages 0 to 1 and 2 to 12. The department does not believe that the maximum rates set based on these categories accurately reflect market prices. The proposed rules provide the more precise categories of children ages 0 to 1, 2 to 3, 4 to 5, and 6 and older.

Increased focus on monitoring to prevent and address fraud and overpayments. The proposed rules authorize increased monitoring in the following ways:

- The child care administrative agency may refuse to authorize payment for child care services to a licensed provider if the provider refuses to submit documentation of the provider's child care prices in response to an agency request.
- An agency may limit the number of children authorized to a family day care provider unless the provider can show that he or she will not exceed the applicable group size limitation.
- An agency may authorize payments to a licensed provider based on attendance rather than enrollment if the agency has documented 3 separate occasions where the provider significantly overreported the attendance of a child.

- If a provider submits false attendance reports, refuses to provide documentation of the child's actual attendance or gives false or inaccurate child care price information, the department or agency may refuse to issue new authorizations to the provider for a period not to exceed 6 months, revoke existing authorizations, and refuse to issue payments until the provider has corrected the violation.
- An agency or the department may require a provider to submit documentation signed by the parent of the actual times that the child was dropped off to and picked up from the provider, contact the parents to determine the child's actual attendance hours, require the provider to submit attendance and payment records for families that pay for child care costs out of their own personal funds, require the provider to have attendance records available at the child care site whenever the department or agency requests to review them, and make on-site inspections to monitor provision of authorized services.

Miscellaneous:

- An agency may refuse to authorize payment on a provider's attendance report that is submitted more than 3 months after the attendance report was issued.
- An agency may authorize payment to a licensed or certified 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.
- The rates of providers at which more than 75% of the children's care is subsidized will not be included in the annual survey to determine market rates.
- 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.
- County and tribal agencies must ensure that each new child care worker completes the department's initial training during the first 6 months of employment.
- A child care provider may request a departmental review under chapter 227, Stats., of a refusal to issue new child care authorizations, a revocation of existing child care authorizations, a refusal to issue payment to the provider, a determination of the provider's payment amount, and collection of an overpayment, including the determination of the amount of the overpayment, the determination of the amount of the overpayment still owed, or a decision under s. 49.85, Stats., to recover the overpayment by means of certification to the Wisconsin department of revenue.
- Child support is deleted from the definition of income to comply with current statutory language.

SECTION 1. DWD 56.01 is amended to read:

DWD 56.01 Authority, purpose, and applicability. This chapter is promulgated under the authority of ~~s. 49.155(1g)~~ ss. 49.155, excluding subs. (1d) and (1g), and 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, Wisconsin works agencies, private agencies under contract to administer child care funds, ~~both licensed and certified providers of child care providers,~~ and eligible parents.

SECTION 2. DWD 56.02 (3) is repealed and recreated to read:

DWD 56.02 (3) “Child care administrative 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.

SECTION 3. DWD 56.02 (4) is amended to read:

DWD 56.02 (4) “Child care funds” means funding ~~allocated by the state to child care administrative agencies~~ for child care purposes under ~~s. 49.155(1g)~~ 49.155, excluding subs. (1d) and (1g), Stats.

SECTION 4. DWD 56.02 (7) is renumbered DWD 56.02 (8).

SECTION 5. DWD 56.02 (7) is created to read:

DWD 56.02 (7) “Child care worker” means a person employed by a child care administrative agency whose duties include determining or redetermining child care subsidy eligibility, authorizing child care funds, making child care payments to providers, or determining and processing the recoupment of child care parent and provider overpayments.

SECTION 6. DWD 56.02 (11), (12), and (13) are amended to read:

DWD 56.02 (11) “Food stamp employment and training program” means the program established under ~~s. 49.124,~~ 49.13 Stats., for the purpose of assisting food stamp recipients to develop marketable work skills and obtain gainful employment.

DWD 56.02 (12) “Foster parent” means a person ~~required to be~~ licensed under s. 48.62(1)(a), Stats.

DWD 56.02 (13) “Income” means money, wages or salary, net income from self-employment, social security, dividends, interest on savings or bonds, income from estates or trusts, net rental income or royalties, public assistance, Supplemental Security Income (SSI), pensions and annuities,

unemployment insurance, worker's compensation, alimony and other maintenance payments, ~~child support payments~~ and veteran pensions.

SECTION 7. DWD 56.02 (14) is created to read:

DWD 56.02 (14) "In-home provider" means a person caring for a child in the child's own home.

SECTION 8. DWD 56.02 (15) is repealed and recreated to read:

DWD 56.02 (15) "Kinship care relative" has the same meaning as "kinship care relative" under s. 48.57 (3m)(a)2., Stats., and "long-term kinship care relative" under s. 48.57 (3n)(a)2., Stats. A "kinship care relative" may or may not be receiving payments under ss. 48.57 (3m) or (3n), Stats.

SECTION 9. DWD 56.02 (15)(note) is amended to read:

Note: ~~Section Sections 48.57 (3m) (a)2., and 48.57 (3n) (a)2., Stats., provides:~~ "Kinship care relative" means provide that a "kinship care relative" and a "long-term kinship care relative" mean "a stepparent, brother, sister, stepbrother, stepsister, first cousin, nephew, niece, aunt, uncle or any person of a preceding generation as denoted by the prefix of grand, great or great-great, whether by consanguinity, direct affinity or legal adoption, or the spouse of any person named in this paragraph, even if the marriage is terminated by death or divorce."

SECTION 10. DWD 56.02 (20), (21), (22), (23), (24), and (25) are renumbered DWD 56.02 (21), (22), (23), (24), (25), and (26), respectively.

SECTION 11. DWD 56.02 (20) is created to read:

DWD 56.02 (20) "Special need" means an emotional, behavioral, physical, or personal need of a child requiring more than the usual amount of care and supervision for the child's age, as documented by a physician, psychologist, special educator, or other qualified professional. A "special need" includes a developmental disability.

SECTION 12. DWD 56.02 (21) is amended to read:

DWD 56.02 (21) "Treatment foster parent" means a person ~~required to be licensed~~ under s. 48.62(1)(b), Stats.

SECTION 13. DWD 56.03 (title) is amended to read:

DWD 56.03 (title) Department of workforce development powers and responsibilities.

SECTION 14. DWD 56.04 (title) is repealed and recreated to read:

DWD 56.04 (title) Policies for child care services through the voucher system.

SECTION 15. DWD 56.04 (1) is repealed.

SECTION 16. DWD 56.04 (3) is renumbered DWD 56.04 (1) and, as renumbered, DWD 56.04 (1)(a)(intro), (1)(a)2., (1)(b)(intro), and (1)(c) are amended to read:

DWD 56.04 (1)(a)(intro) AUTHORIZED PROVIDERS. (a) A child care administrative agency may ~~pay for~~ authorize payment for child care services provided by any of the following child care providers:

DWD 56.04(1)(a)2. Providers certified by a county or tribal agency under standards specified in s. DWD 55.08 or 55.09. The agency may authorize payment to providers who become certified from the date the certification application was received by the child care administrative agency.

DWD 56.04 (1) (b) (intro) A child care administrative agency may ~~reimburse for~~ authorize payment for services from other than a child care provider under par. (a) only if at least one of the following conditions is met:

DWD 56.04 (1) (c) A child care administrative agency may not ~~reimburse~~ authorize payment to a person legally responsible for a child under s. 49.90, Stats., for child care services.

SECTION 17. DWD 56.04 (4)(a) is repealed.

SECTION 18. DWD 56.04 (4)(b) is renumbered DWD 56.04 (2)(a) and, as renumbered, DWD 56.04 (2)(a)1.c. is amended to read:

DWD 56.04 (2)(a)1.c. The voucher shall set a maximum amount of authorized ~~reimbursement~~ which payment that is no greater than the county or tribal maximum rate the lesser of the provider price and the county or tribal maximum rate, minus any co-payment that the parent is required to make.

SECTION 19. DWD 56.04 (2)(b) is created to read:

DWD 56.04 (2)(b) A child care administrative agency may authorize payment for child care services to a two parent family only if both parents are participating in an approved activity as defined in s. 49.155 (1m)(a) or if one parent is participating in an approved activity and the other parent is unable to care for the child due to a disability or health condition as verified by a doctor, psychiatrist, or psychologist.

SECTION 20. DWD 56.04 (4)(c) is renumbered 56.04(2)(c), and, as renumbered, is amended to read:

DWD 56.04 (2)(c) If a county or tribal agency ~~purchases~~ 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 21. DWD 56.04 (4)(d) is renumbered 56.04(2)(d), and as renumbered, DWD 56.04 (2)(d)(intro), DWD 56.04 (2)(d)1., and DWD 56.04 (2)(d)2. are amended to read:

DWD 56.04 (2)(d)(intro) The child care administrative agency shall ~~reimburse~~ authorize payment to child care providers as follows:

DWD 56.04 (2)(d)1. ~~Except as provided in subd. 3., for~~ For licensed group and family day care centers, the agency shall ~~make payments~~ authorize payment based on authorized units of service, except in the following circumstances:

DWD 56.04 (2)(d)2. For certified providers, the agency shall ~~reimburse~~ authorize payment for units of service used by each child, up to the maximum number of authorized units, except as provided in subd. (2)(h).

SECTION 22. DWD 56.04 (2)(d)3. is renumbered DWD 56.04 (2)(d)1.a. and, as renumbered, is amended to read:

DWD 56.04 (2)(d)1.a. ~~For licensed group and family day care centers, when the schedule of child care to be used is expected to vary widely, the~~ The agency may ~~make payments~~ 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.

SECTION 23. DWD 56.04 (2)(d)1.b. is created to read:

DWD 56.04 (2)(d)1.b. 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.

SECTION 24. DWD 56.04 (2)(e), (f), (g), (h), and (i) are created to read:

DWD 56.04 (2)(e) The child care administrative agency may refuse to authorize payment for child care services to a licensed provider if the provider refuses to submit documentation of the provider's child care prices in response to an agency request.

DWD 56.04 (2)(f) The child care administrative agency may refuse to authorize payment on a provider's attendance report that is submitted more than 3 months after the attendance report was issued.

DWD 56.04 (2)(g) The child care administrative agency may limit the number of children that may be authorized to a certified or licensed family day care provider, who is not an in-home provider, for a particular time period, unless the provider can show that he or she will not exceed the applicable group size limitation.

DWD 56.04 (2)(h) The child care administrative agency may authorize payment to a licensed or certified 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. The department and child care administrative agency may not consider payment for a temporary absence to be an overpayment if the parent intended to return to work but does not actually return.

DWD 56.04 (2)(i) The department may issue all payments by electronic funds transfer.

SECTION 25. DWD 56.04 (4)(e) is renumbered DWD 56.045 and, as renumbered, is amended to read:

DWD 56.045 The department may reimburse a county agency, tribal agency, ~~or W-2 agency~~, or private nonprofit agency that provides child care for children of migrant workers for direct child care services or child care costs incurred on-site or for contracted child care approved in advance by the department. Reimbursement rates for contracts ~~shall~~ and services may be negotiated by the county, tribe, or W-2 agency and approved by the department or may be set by the department.

SECTION 26. DWD 56.04 (5) is renumbered DWD 56.04 (3).

SECTION 27. DWD 56.04 (6) is renumbered DWD 56.04 (4) and, as renumbered, is amended to read:

DWD 56.04 (4) PARENTAL CHOICE. ~~Parent choice of provider.~~ Parents may choose the particular ~~licensed or certified~~ child care provider for their child, except that parents may use in-home day care only if one of the criteria under sub. ~~(3)(e)~~ (1)(e) is met.

SECTION 28. DWD 56.04 (7) is renumbered DWD 56.04 (5) and, as renumbered, DWD 56.04 (5)(c)(intro) is amended to read:

DWD 56.04 (5)(c)(intro) 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 attendance reports, refuses 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:

SECTION 29. DWD 56.04 (5)(c)1., 2., and 3. are repealed and recreated to read:

DWD 56.04 (5)(c)1. Refuse to issue new child care authorizations to a provider for a period of time not to exceed 6 months.

DWD 56.04 (5)(c)2. Revoke existing child care authorizations to the provider.

DWD 56.04 (5)(c)3. Refuse to issue payments to the provider until the provider has corrected the violation.

SECTION 30. DWD 56.04 (5)(d) is amended to read:

DWD 56.04 (5)(d) When the department or a child care administrative agency ~~stops~~ refuses to issue new authorizations, revokes existing authorizations, or refuses to issue payments to a provider under par. (c), the child care administrative agency shall provide written notice to the parent as soon as possible before the effective date of the sanction.

SECTION 31. DWD 56.04 (5)(e) and (5)(f) are created to read:

DWD 56.04 (5)(e) If the 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.

DWD 56.04 (5)(f) 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 32. DWD 56.04 (6) is created to read:

DWD 56.04 (6) MONITORING OF CHILD CARE PROGRAMS. The department or the child care administrative agency may take one or more of the following steps to monitor a provider's compliance with program requirements:

- (a) Require the provider to submit documentation signed by the parent of the actual times that the child was dropped off to and picked up from the child care provider.
- (b) Contact the parents to determine the child's actual attendance hours.
- (c) Require the provider to submit attendance and payment records for families that pay for child care costs out of their own personal funds.
- (d) Require the provider to have attendance records available at the child care site whenever the department or child care administrative agency requests to review them.
- (e) Make on-site inspections to monitor provision of authorized services.

SECTION 33. DWD 56.045 (title) is created to read:

DWD 56.045 (title) Payment of child care costs outside of the voucher system.

SECTION 34. DWD 56.05 (1) is amended to read:

DWD 56.05 (1) GENERAL. Each child care administrative agency shall administer child care funds ~~specified in s. DWD 56.04 (1)~~ in accordance with the requirements set forth in this section. A child care administrative agency may subcontract for administration of child care funds with the approval of the department.

SECTION 35. DWD 56.05 (2) is created to read:

DWD 56.05 (2) TRAINING REQUIREMENT. County and tribal agencies shall ensure that each new child care worker completes the department's initial training during the first 6 months of employment.

SECTION 36. DWD 56.05 (4) is renumbered DWD 56.05 (4)(a).

SECTION 37. DWD 56.05 (4)(b) is created to read:

DWD 56.05 (4)(b) County and tribal 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 38. DWD 56.05 (5) is repealed.

SECTION 39. DWD 56.06 (1)(b) is amended to read:

DWD 56.06 (1)(b) Survey. The county or tribal 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 agency. The child care prices shall be submitted in writing to be included in the survey.

SECTION 40. DWD 56.06 (1)(c)2. is amended to read:

DWD 56.06 (1)(c)2. Children age 2 ~~and older~~ to 3 years.

SECTION 41. DWD 56.06 (1)(c)3. and 4. are created to read:

DWD 56.06 (1)(c)3. Children age 4 to 5 years.

DWD 56.06 (1)(c)4. Children age 6 to 13 years.

SECTION 42. DWD 56.06 (2)(a)2. and DWD 56.06 (2)(b)1. are amended to read:

DWD 56.06 (2)(a)2. In determining whether 75% of the day care slots can be purchased at or below the maximum rate, the county or tribal agency may exclude day care centers ~~which~~ that operate less than 5 days a week or 5 hours a day, ~~which~~ receive funding from a county department established under s. 51.42 or 51.437, Stats., ~~or which~~ 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, excluding subs. (1d) and (1g), Stats.

DWD 56.06(2)(b)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 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, excluding subs. (1d) and (1g), Stats.

SECTION 43. DWD 56.06 (2)(d) is amended to read:

DWD 56.06 (2)(d) In-home day care. For in-home care, the county or tribal 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 ~~choose to reimburse~~ 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.

SECTION 44. DWD 56.07 is created to read:

DWD 56.07 Provider appeal rights. (1) A child care provider who contests any of the following actions may request a departmental review:

- (a) Refusal to issue new child care authorizations.
- (b) Revocation of existing child care authorizations.
- (c) Refusal to issue payment to the provider.
- (d) Determination of the provider's payment amount.

(e) Collection of an overpayment, including the determination of the amount of the overpayment, the determination of the amount of the overpayment still owed, 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.

(2) A request for a departmental review may be made by a child care provider or someone with legal authority to act on their behalf.

(3) A request for a departmental review shall be in writing and received at the address provided on the notice within 30 days from the date printed on the the notice of action under sub. (1).

(4) Upon receipt of a timely request for departmental review, the department shall give the child care provider a contested case hearing under chapter 227, Stats.

(5) The department may contract with the division of hearings and appeals to conduct the review.

SECTION 46. DWD 56.08(1)(note) is amended to read:

DWD 56.08(1)(note): This copayment schedule is current as of ~~February 1, 2004~~ April 1, 2002. DWD may make future adjustments to the schedule as described in sub. (3).

SECTION 47. DWD 56.08 (3)(a)5. is amended to read:

DWD 56.08 (3)(a)5. A change in economic factors affecting the cost of child care to the state, such as an increase in the demand for child care financial assistance under s. ~~49.175(1)-(e)~~ 49.155, excluding subs. (1d) and (1g), Stats.

SECTION 48 DWD 56.08(3)(a) 6. is created to read:

DWD 56.08(3)(a)6. Funding is not sufficient to meet the needs of all eligible families applying for child care assistance.

SECTION 49. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.