

EMERGENCY RULE
Department of Workforce Development
Division of Family Supports

The Wisconsin Department of Workforce Development amends s. DWD 56.08 (1) and (2)(a), (e), and (f) and repeals and recreates Table DWD 56.08, relating to child care copayments and affecting small businesses.

Finding of Emergency

The Department of Workforce Development 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 federal Department of Health and Human Services is requiring that Wisconsin eliminate different copayment amounts for families who receive child care services from a certified provider and families who receive child care services from a licensed provider. The change to the copayment schedule must be implemented by April 1, 2008, or Wisconsin risks losing \$82 million annually from the Child Care Development Fund.

Analysis Prepared by the Department of Workforce Development

Statutory authority: Sections 49.155 (5) and 227.11, Stats.

Statutes interpreted: Section 49.155 (5), Stats.

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

Explanation of agency authority. Section 49.155 (5), Stats., provides that an individual is liable for the percentage of the cost of child care specified by the department in a printed copayment schedule.

Summary of the emergency rule. Since 1997, the child care parental copayment schedule in DWD 56.08 has provided different copayment amounts for parents who receive child care services from a certified child care provider and parents who receive child care services from a licensed provider. A certified provider may provide child care services for 1 to 3 unrelated children, care in the child's home, or care for school-age children and receive reimbursement from state or federal funds. Certified providers are regulated by the Department. A child care provider who provides care and supervision for more than 3 unrelated children for compensation is required to be licensed by the Department of Health and Family Services.

When the Department submitted the federal fiscal year 2008-2009 Child Care and Development Fund (CCDF) State Plan for approval to the federal Department of Health & Human Services, DHHS responded with a notice that the plan was not approvable as submitted. The DHHS review found that Wisconsin's sliding fee scale (parental copayment schedule) is not allowable under CCDF regulations because it includes different copayment amounts based on category of care, such as certified versus licensed providers, and this difference interferes with parental choice of providers. Failure to submit an approvable plan could potentially result in a disruption of federal funding provided to Wisconsin for child care services for eligible families.

The Department submitted a corrective plan eliminating the different copayment amounts for certified and licensed care. DHHS has approved the corrective Wisconsin State Plan contingent upon implementation of changes to the copayment schedule with a deadline of April 1, 2008.

Currently, the copayments paid by families who receive child care services from a certified provider are lower than the copayments paid by families who receive child care services from a licensed provider. This rule eliminates the differential copayment amounts by increasing copayments for certified care to the same level as copayments for licensed care.

The current s. DWD 56.08 provides a copayment schedule and language that copayment amounts will be based on family size, family gross income, the number of children in a given family in child care, and the type of child care selected, with certain exceptions. The proposed rule will repeal "type of child care selected" from these provisions and update the copayment schedule to provide the same copayment amounts for certified and licensed care at the licensed care level. The copayment schedule is also adjusted for the 2008 federal poverty levels as provided under s. DWD 56.08 (3).

Summary of related federal regulations. Under 45 CFR 98.42, lead agencies must establish, and periodically revise, by rule, a sliding fee scale that provides for cost sharing by families that receive child care services funded by the Child Care Development Fund. Sliding fee scales are to be based on income, family size, and other factors as appropriate. The section of the preamble to the rule regarding sliding fee scales refers readers to 45 CFR 98.43 regarding equal access (63 Fed. Reg. 39936, 39957, July 24, 1998).

The rule on equal access at § 98.43 provides that the state agency shall certify that the payment rates for the provision of child care services are sufficient to ensure equal access for eligible families as families who are not eligible to receive CCDF child care assistance. The state agency must show how a choice of the full range of providers is made available (center, group, family, and in-home care), how payments rates are adequate based on a local market survey, and how copayments based on a sliding fee scale are affordable. Payment rates must be consistent with 45 CFR 98.30 regarding parental choice requirements. Among other things, the parental choice requirements provide that state regulatory requirements may not have “the effect of limiting parental access to or choice from among such categories of care or types of providers, as defined in 45 CFR 98.2.”

The section of the preamble to the rule regarding equal access (63 Fed. Reg. 39936, 39960, July 24, 1998) provides that:

[S]liding fee scales should not be designed in a way that limits parental choice... Sliding fees scales must continue to be based on family size and income as § 98.42(b) has not changed. We note that this regulation provides Lead Agencies with the flexibility to take additional elements into consideration when designing their fee scales, such as the number of children in care. However, as was stated in the preamble to the regulations published on August 4, 1992, basing fees on the cost or category of care is not allowed (57 Fed. Reg. 34380).

The preamble to the August 4, 1992, rule (57 Fed. Reg. 34352, 34411) actually provides that “While Grantees may take into account the cost of care in establishing a fee scale (e.g., the family pays a percentage of the cost of care), the Grantee may not vary the fee scale based on the category of care or the type of provider.”

The definitions section of the current rule at 45 CFR 98.2 provides that “categories of care” means “center-based child care, group home child care, family child care and in-home care.” The rule defines “types of providers” as “different classes of providers under each category of care. For the purposes of CCDF, types of providers include non-profit providers, for-profit providers, sectarian providers and relatives who provide care.”

In its review of the 2008-2009 Wisconsin State Plan, the federal Department of Health & Human Services included licensed versus certified child care in the definition of “categories of care.”

Comparison with rules in adjacent states. Minnesota. Copayment amounts are based on gross income and household size.

Illinois. Copayment amounts are based on family income, family size, and number of children in care.

Michigan. Copayment amounts are based on family size and family income.

Iowa. Copayment amounts are based on gross income, family size, and units of service used.

Summary of factual data and analytical methodologies. The federal Department of Health and Human Services has required that Wisconsin eliminate differential copayment amounts based on category of care, such as certified versus licensed providers.

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

Analysis used to determine effect on small businesses. Certified providers will need to collect the increased copayments directly from families who use their child care services. If providers allow families to pay the increased copayment in installments, they may have additional bookkeeping. There are no reporting requirements necessary for compliance with the rule.

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SECTION 1. DWD 56.08 (1) and (2)(a), (e), and (f) are amended to read:

DWD 56.08 Parent copayments. (1) SCHEDULE. The department shall set a schedule for parent copayment responsibilities for all parents who receive child care financial assistance under s. 49.155, Stats., excluding s. 49.155 (1g), Stats. Copayment amounts will be based on family size, family gross income, and the number of children in a given family in child care, ~~and the type of child care selected~~. The copayment schedule is provided in Table DWD 56.08.

Note: This copayment schedule is current as of ~~February 26, 2006~~ March 30, 2008. DWD may make future adjustments to the schedule as described in sub. (3).

(2) EXCEPTIONS. (a) Families with children who are authorized for child care assistance for 20 hours or less are responsible for 50% of the amount listed in the copayment schedule for those children, based on family size, family gross income, and the number of children in a given family in child care, ~~and the type of care selected~~.

(e) Kinship care relatives who are providing care for a child without a court order are responsible for the minimum copayment based on the number of children in the family in child care ~~and the type of child care selected for the kinship~~

care child in their care, unless they are receiving a child care subsidy for another child who is subject to a copayment greater than the minimum copay.

Note: Kinship care relatives do not have to be receiving payments under s. 48.57(3m) or (3n), Stats., for this paragraph to apply.

(f) Parents who have left a Wisconsin works employment position for unsubsidized employment may pay the minimum copayment amount based on the number of children in the family in child care ~~and the type of child care selected~~ for the first month of the unsubsidized employment.

SECTION 2. Table DWD 56.08 is repealed and recreated to read:

Child Care Co-Payment Schedule for Licensed and Certified Care

Look down the column of the appropriate family size until you find the gross family monthly income level at or just below the family income. Look to the right to find the appropriate co-payment by family size.

-----Gross Monthly Family Income-----										WEEKLY CO-PAY AMOUNT				
FAMILY SIZE										CHILDREN IN SUBSIDIZED CARE:				
	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>	<u>7</u>	<u>8</u>	<u>9</u>	<u>10 or more</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5 or more</u>
70% FPL	\$817	\$1,027	\$1,237	\$1,447	\$1,657	\$1,867	\$2,077	\$2,287	\$2,497	5	9	15	19	24
75% FPL	\$875	\$1,100	\$1,325	\$1,550	\$1,775	\$2,000	\$2,225	\$2,450	\$2,675	5	12	17	23	28
80% FPL	\$933	\$1,173	\$1,413	\$1,653	\$1,893	\$2,133	\$2,373	\$2,613	\$2,853	8	13	19	25	31
85% FPL	\$992	\$1,247	\$1,502	\$1,757	\$2,012	\$2,267	\$2,522	\$2,777	\$3,032	12	17	23	28	36
90% FPL	\$1,050	\$1,320	\$1,590	\$1,860	\$2,130	\$2,400	\$2,670	\$2,940	\$3,210	13	21	27	35	42
95% FPL	\$1,108	\$1,393	\$1,678	\$1,963	\$2,248	\$2,533	\$2,818	\$3,103	\$3,388	17	25	33	42	48
100% FPL	\$1,167	\$1,467	\$1,767	\$2,067	\$2,367	\$2,667	\$2,967	\$3,267	\$3,567	19	28	36	46	53
105% FPL	\$1,225	\$1,540	\$1,855	\$2,170	\$2,485	\$2,800	\$3,115	\$3,430	\$3,745	23	31	40	48	56
110% FPL	\$1,283	\$1,613	\$1,943	\$2,273	\$2,603	\$2,933	\$3,263	\$3,593	\$3,923	25	34	42	51	59
115% FPL	\$1,342	\$1,687	\$2,032	\$2,377	\$2,722	\$3,067	\$3,412	\$3,757	\$4,102	28	36	45	54	62
120% FPL	\$1,400	\$1,760	\$2,120	\$2,480	\$2,840	\$3,200	\$3,560	\$3,920	\$4,280	31	40	48	56	66
125% FPL	\$1,458	\$1,833	\$2,208	\$2,583	\$2,958	\$3,333	\$3,708	\$4,083	\$4,458	35	43	51	60	70
130% FPL	\$1,517	\$1,907	\$2,297	\$2,687	\$3,077	\$3,467	\$3,857	\$4,247	\$4,637	36	47	56	67	77
135% FPL	\$1,575	\$1,980	\$2,385	\$2,790	\$3,195	\$3,600	\$4,005	\$4,410	\$4,815	40	50	61	73	83
140% FPL	\$1,633	\$2,053	\$2,473	\$2,893	\$3,313	\$3,733	\$4,153	\$4,573	\$4,993	42	53	66	76	89
145% FPL	\$1,692	\$2,127	\$2,562	\$2,997	\$3,432	\$3,867	\$4,302	\$4,737	\$5,172	45	56	67	79	90
150% FPL	\$1,750	\$2,200	\$2,650	\$3,100	\$3,550	\$4,000	\$4,450	\$4,900	\$5,350	48	59	71	82	94
155% FPL	\$1,808	\$2,273	\$2,738	\$3,203	\$3,668	\$4,133	\$4,598	\$5,063	\$5,528	50	61	73	84	97
160% FPL	\$1,867	\$2,347	\$2,827	\$3,307	\$3,787	\$4,267	\$4,747	\$5,227	\$5,707	53	66	76	89	100
165% FPL	\$1,925	\$2,420	\$2,915	\$3,410	\$3,905	\$4,400	\$4,895	\$5,390	\$5,885	55	67	79	90	102
170% FPL	\$1,983	\$2,493	\$3,003	\$3,513	\$4,023	\$4,533	\$5,043	\$5,553	\$6,063	56	71	82	94	105
175% FPL	\$2,042	\$2,567	\$3,092	\$3,617	\$4,142	\$4,667	\$5,192	\$5,717	\$6,242	57	72	84	97	107
180% FPL	\$2,100	\$2,640	\$3,180	\$3,720	\$4,260	\$4,800	\$5,340	\$5,880	\$6,420	60	75	88	100	110
185% FPL	\$2,158	\$2,713	\$3,268	\$3,823	\$4,378	\$4,933	\$5,488	\$6,043	\$6,598	61	77	91	102	113
-----185% of the Federal Poverty Level-----														
190% FPL	\$2,217	\$2,787	\$3,357	\$3,927	\$4,497	\$5,067	\$5,637	\$6,207	\$6,777	62	78	94	104	115
195% FPL	\$2,275	\$2,860	\$3,445	\$4,030	\$4,615	\$5,200	\$5,785	\$6,370	\$6,955	65	81	96	107	119
200% FPL	\$2,333	\$2,933	\$3,533	\$4,133	\$4,733	\$5,333	\$5,933	\$6,533	\$7,133	67	83	99	110	121
-----+200% of the Federal Poverty Level-----														

NOTE: The copayment rate for teen parents who are not Learnfare participants is minimum copay and is found by selecting the lowest income line (70%) FPL and then finding the copayment listed for the appropriate number of children. Parents who have left a W-2 employment position for unsubsidized work also qualify for the minimum copay for one month. Families with children who are authorized for 20 hours or less are subject to one half of their share of the family copay listed above for those children. No copay is required for parents who participate in Learnfare or Food Stamp Employment and Training. Foster parents do not have a copayment responsibility for the foster children in their care. Kinship care relatives caring for a child under a court order do not have a copayment responsibility. Kinship care relatives caring for a child without a court order pay the minimum copay, unless they are receiving a child care subsidy for another child who is subject to a copayment greater than the minimum copay.

SECTION 3. EFFECTIVE DATE. This rule shall take effect on March 30, 2008, as provided in s. 227.24 (1) (c), Stats.