

# Statement of Scope

## Department of Children and Families

**Rule Number:** Chapter DCF 201

**Relating to:** Child Care Subsidy Program Integrity

**Rule Type:** Emergency and Permanent

This statement of scope was approved by the governor on August 16, 2017.

### **1. Finding/nature of emergency (for emergency rules only)**

An emergency rule is necessary to protect child care subsidy funds from fraud and misuse.

### **2. Detailed description of the objective of the rules**

The emergency and proposed rules will update the department's child care subsidy rules to address program integrity concerns with the department's new system for issuing subsidy payments. Under the new payment system, the department makes subsidy payments available to a parent electronically on the first of a month, and the parent electronically transfers the appropriate payment to the provider. The rules will prohibit child care providers from requiring that parents who receive a subsidy disclose information that private pay parents are not required to disclose, including account numbers, personal identification numbers, and the dollar amount in the account from which payment for child care services is made. Providers will also be prohibited from using a parent's EBT card, account number, or personal identification number to transfer subsidy funds to themselves.

The emergency and proposed rules will establish an expectation that child care providers have a written payment agreement with each parent who receives a child care subsidy under s. 49.155, Stats. Child care providers will be prohibited from charging parents who receive a subsidy more for child care services than private pay parents are charged. Providers will also not be allowed to require that parents who receive a subsidy pay on a different schedule than private pay parents.

Under the rules, a parent's attempt to sell access to his or her subsidy account to another person will be considered to be an intentional program violation under s. 49.151 (2), Stats. Also, child care providers will be prohibited from returning cash to a parent or any other person from the parent's electronic subsidy payment.

In addition, the department will end a parent's authorization after 90 days if they have not activated their card. The parent will be able to reactivate the authorization by contacting the child care administrative agency.

### **3. Detailed explanation of statutory authority for the rules**

The department administers the child care subsidy program under s. 49.155, Stats. Section 49.155 (7m), Stats., provides that the department shall by rule establish policies and procedures permitting the department to do all of the following if a child care provider submits false, misleading, or irregular information to the department or if a child care provider fails to comply with the terms of the program under this section and fails to provide to the satisfaction of the department an explanation for the noncompliance:

1. Recoup payments made to the child care provider.
2. Withhold payments to be made to the child care provider.
3. Impose a forfeiture on the child care provider.

Section 49.151 (2), Stats., provides that if a child care administrative agency determines that an individual applying for or receiving benefits under s. 49.155, Stats., for the purpose of establishing or maintaining eligibility for those benefits or for the purpose of increasing the value of those benefits, has committed an intentional program violation related to any provision in s. 49.155, Stats., or a rule promulgated under this section, the child care administrative agency shall deny benefits to the individual as follows:

1. For a first intentional program violation, for 6 months.
2. For a 2nd intentional program violation, for one year.
3. For a 3rd intentional program violation, permanently.

Section 49.83, Stats., provides that no person may use or disclose information concerning applicants and recipients of Wisconsin Works under ss. 49.141 to 49.161, Stats.

Section 227.11 (2) (a), Stats., expressly confers rule-making authority on each agency to promulgate rules interpreting the provisions of any statute enforced or administered by the agency.

**4. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rules**

200 hours

**5. List with description of all entities that may be affected by the emergency and proposed rules**

Families who receive a child care subsidy under s. 49.155, Stats., child care providers who care for children whose care is subsidized under s. 49.155, Stats., and child care administrative agencies.

**6. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the emergency and proposed rules**

42 USC 9858c (c) (2) (S) requires that the payment practices of child care providers that serve children who receive assistance reflect generally accepted payment practices of child care providers that serve children who do not receive assistance, so as to provide stability of funding and encourage more child care providers to serve children who receive assistance.

A State Plan shall include a description of how the Lead Agency will prevent, reduce, and collect improper payments, including a process to investigate and recover fraudulent payments and to impose sanctions on clients or providers in response to fraud.

Lead Agencies must have systems in place to document that CCDF funds are spent in compliance with the law and the approved plan. Expenditures not made in accordance with the Child Care Development Block Grant Act, implementing regulations, or the approved CCDF Plan are subject to disallowance, pursuant to 45 CFR 98.66(a).

Lead agencies must ensure that child care providers receive payment for any services in accordance with a written payment agreement or authorization for services that includes, at a minimum, information regarding provider payment policies, including rates, schedules, any fees charged to the providers, and dispute resolution process.

**7. Anticipated economic impact of implementing the rule s (note if the rule is likely to have a significant economic impact on small businesses)**

The rule is anticipated to have little or no economic impact on small businesses.

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