

## Statement of Scope

### Department of Children and Families

**Rule Number:** Chapter DCF 201

**Relating to:** Child Care Subsidy Program

**Rule Type:** Emergency and Permanent

This statement of scope was approved by the governor on July 27, 2018.

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

An emergency rule is necessary to implement federal requirements and recent state law changes affecting the child care subsidy program. Section 227.19 (2), Stats., limits the ability of agencies to promulgate permanent rules in even-numbered years.

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

In September 2016, the Administration for Children and Families issued final regulations to implement the Child Care Development Block Grant Act of 2014. States are expected to comply with the new regulations by October 1, 2018, as a condition of receiving federal funding through the Child Care Development Fund (CCDF). Approximately 39 percent of the funding for Wisconsin's child care subsidy program is through CCDF. The rules will include changes required under CCDF regulations.

The rules will also specify financial resources to be excluded from the definition of "liquid assets" for the purpose of the liquid asset limit under s. 49.155 (1m) (cm), Stats., as created by 2017 Wisconsin Act 59. Under this provision, a family may not have liquid assets that exceed \$25,000.

In addition, the rules will establish hardship exemptions to the asset restrictions under s. 49.155 (1m) (cr), Stats., as created by 2017 Wisconsin Act 269. Under this provision, a family's combined equity in their vehicles may not exceed \$20,000. Vehicles used for business purposes are excluded from this limit. Also, a family may not own more than one home, the home must be used as the family's primary residence, and the value of the home may not exceed 200 percent of the statewide median value. Agricultural land is excluded from this limit.

Also, the rules will require verification of a family's address as a condition of eligibility. Exceptions will be allowed for homeless families and for persons registered under the address confidentiality program under s. 165.68, Stats.

The method for determining copayments for children who do not attend child care full-time will also be modified. Under the current rule, copayment amounts are based on family size, family gross income, and the number of children in a given family in child care. If a child attends child care fewer than 20 hours per week, the copayment is 50 percent of the full-time amount. Under the rulemaking order, the full-time/part-time determination will be repealed and the number of authorized hours will become a factor in determining copayment amounts.

#### **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 (1) (bm), Stats., as created by 2017 Wisconsin Act 59, provides that “liquid assets” does not include any financial resources designated by the department by rule as excluded for the purpose of the limit on the total liquid assets of a family under s. 49.155 (1m) (cm), Stats.

Section 49.155 (2m), Stats., as created by 2017 Wisconsin Act 269, provides that the department may promulgate a rule that establishes a hardship exemption to the limits on the value of a family’s home and vehicles under s. 49.155 (1m) (cr), Stats..

Section 49.155 (1m) (d), Stats., provides that an individual may receive a subsidy if the individual satisfies other eligibility criteria established by the department by rule.

Section 49.155 (5), Stats., provides that an individual receiving a subsidy under this section is liable for the difference, if any, between the cost of the child care provided by the child care provider or providers selected by the individual and the subsidy amount. The department shall specify minimum or estimated copayment amounts based on family size, income level, and other factors, a schedule of which will be available in electronic form on the department’s Internet site and in paper form.

States are required to comply with 45 CFR Part 98 as a condition of receiving Child Care Development Funds.

Section 227.11 (2) (a) (intro.), 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**

300 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**

45 CFR 98.20 Eligibility for Child Care Assistance

(a) For a family to be eligible for child care assistance, the following requirements must be met at the time of eligibility determination or redetermination:

-The child shall be under 13 years of age or, at a State’s option, under age 19 and physically or mentally incapable of caring for himself or herself.

-The family’s income may not exceed 85 percent of the State’s median income (SMI) for a family of the same size.

-The family’s assets may not exceed \$1,000,000 (as certified by a family member).

-The child’s parents shall be working or attending a job training or educational program; or the child shall be receiving, or need to receive, protective services, which may include specific populations of vulnerable children as identified by the State.

-A State may waive income and asset requirements for the family of a child who is receiving, or needs to receive, protective services, on a case-by-case basis or, if defined in the State plan, for all children in foster care.

(b) A State may establish additional eligibility conditions, but these conditions may not impact

eligibility at any time other than eligibility determination or redetermination.

#### 45 CFR 98.21 Eligibility Determination Processes

(a) A State shall redetermine a family's eligibility for child care assistance no sooner than 12 months following the initial determination or most recent redetermination, subject to the following:

- During the period of time between determinations or redeterminations of eligibility, the family shall be considered eligible and shall receive services at least at the same level, regardless of the following:

- A change in family income as long as the family's income does not exceed 85% of the SMI for a family of the same size.

- A temporary change or cessation of work or attendance at a training program that does not exceed 3 months.

- A State may discontinue assistance due to a parent's loss of work or cessation of attendance at a job training or educational program that is not a temporary change, but assistance must be continued at least at the same level after each such loss or cessation until the earlier of the following:

- 3 months after the parent's loss of work or cessation of attendance at the job training or educational program.

- The parent's next annual redetermination of eligibility.

- Notwithstanding the 12-month eligibility period, a State may discontinue assistance prior to a family's next redetermination in the following limited circumstances:

- Excessive unexplained absences despite multiple attempts by the State to contact the family and provider, including prior notification of possible discontinuation of assistance. If the State chooses this option, it shall define the number of unexplained absences that shall be considered excessive.

- A change in residency outside of the State.

- Substantiated fraud or intentional program violations that invalidate prior determinations of eligibility.

- A State cannot increase family co-payment amounts within the minimum 12-month eligibility period, except during the graduated phase-out under (b).

(b) A State may establish initial income eligibility for a family at a level less than the CCDF level of 85 percent of the SMI for a family of the same size but must provide a graduated phase-out by implementing two-tiered eligibility thresholds, with the second tier used at the time of eligibility redetermination.

- The second tier may be set at 85 percent of the SMI or an amount that is lower than 85 percent of the SMI and higher than the State's initial eligibility level.

- To help families transition off of child care assistance, a State may gradually adjust co-pay amounts for families under graduated phase-out conditions. During the graduated phase-out, the State may require additional reporting on changes in family income, provided the requirements do not constitute an undue burden.

(c) A State shall establish processes for initial determination and redetermination of eligibility that take into account irregular fluctuation in earnings and ensure that temporary increases do not affect family eligibility or co-payments, including temporary increases that result in family income exceeding 85 percent of the SMI.

(e) A State shall require families to report a change at any point during the minimum 12-month period, limited to the following:

- If the family's income exceeds 85 percent of the SMI, taking into account irregular income fluctuations.

- At the option of the State, the family has experienced a non-temporary cessation of work, training, or education.

- A State may impose additional requirements on parents to report a change in circumstances as long as the requirements do not constitute an undue burden on families. Any additional reporting requirements shall be limited to items that impact a family's CCDF eligibility or those that enable the State to contact the family or pay providers.

  - During a period of graduated phase-out, a State may require additional reporting on changes in family income for the gradual adjustment of family copayments, if desired.

- A State must allow families the option to voluntarily report changes on an ongoing basis.

  - The State is required to act on information provided by the family that will reduce the family's copayment or increase the family's subsidy.

  - The State is prohibited from acting on information that would reduce the family's subsidy, unless the information provided indicates any of the following:

    - The family's income exceeds 85 percent of the SMI, taking into account irregular income fluctuations.

    - At the option of the State, the family has experienced a non-temporary change in the work, training, or educational status.

#### 45 CFR 98.45 (k) Equal Access and Copayments

- A State shall establish, and periodically revise, by rule, a sliding fee scale for families that receive CCDF child care services that meets all of the following conditions:

  - Helps families afford child care and enables choice of a range of child care options.

  - Is based on income and the size of the family and may be based on other factors as appropriate, but may not be based on the cost of care or amount of subsidy payment.

  - Provides for affordable family co-payments that are not a barrier to families receiving assistance under this part.

- A State may waive co-payments for any of the following:

  - Families whose incomes are at or below the poverty level for a family of the same size.

  - Families that have children who receive or need to receive protective services.

  - Families that meet other criteria established by the State.

#### 45 CFR 98.60 and 98.68 Program Integrity

- A State shall recover child care payments that are the result of fraud. These payments shall be recovered from the party responsible for committing the fraud.

- A State shall investigate and recover fraudulent payments and impose sanctions on clients or providers in response to fraud.

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