

Statement of Scope

Department of Children and Families

Rule Number: Chapter DCF 201

Relating to: Child care subsidy copayments and registration fees

Rule Type: Emergency and Permanent

This statement of scope was approved by the governor on December 22, 2022.

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

The Department of Children and Families finds that an emergency exists and that an emergency rule may be necessary for the immediate preservation of the public welfare. The facts constituting the emergency are as follows:

As a condition of approval of Wisconsin's 2022-2024 Child Care Development Fund (CCDF) Plan, the payment practices of the state child care subsidy program must come in compliance with the equal access requirements in 45 CFR 98.45 by September 30, 2023. An emergency rule will be necessary if the proposed permanent rule is not expected to be effective by that date.

2. Detailed description of the objective of the rules

The Administration for Children and Families, Office of Child Care, has determined that the state is not in compliance with the federal requirement that the payment practices of the state child care subsidy program reflect generally-accepted payment practices of child care providers that serve children who do not receive CCDF subsidies, including paying for reasonable mandatory registration fees that the provider charges to private-paying parents. The proposed rules will authorize payment of these fees.

The proposed rules will also include a change in the method for determining copayment amounts. Under the current rules, the method for determining a parent's copayment is based on the size of the assistance group, the assistance group's gross income, the number of children in the assistance group in child care, and the number of hours authorized for a child care subsidy. Under the proposed rules, copayment amounts will be based on the size of the assistance group and the assistance group's gross income.

The proposed rules may also include additional minor updates and technical corrections.

3. Detailed explanation of statutory authority for the rule

Section 49.155 (5) (a), 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.

Section 49.155 (6), Stats., provides the following:

(a) The department shall establish maximum payment rates for licensed child care services provided under this section. The department shall set the rates so that at least 75 percent of the number of places for children within the licensed capacity of all child care providers can be purchased by eligible individuals under this section.

(b) The department shall set maximum payment rates for Level I certified family child care providers certified under s. 48.651 (1) (a), Stats., for services provided to eligible individuals under this section. The maximum rates set under this paragraph may not exceed 90 percent of the rates established under par. (a).

(c) The department shall set maximum payment rates for Level II certified family child care providers for services provided to eligible individuals under this section. The maximum rates set under this paragraph may not exceed 90 percent of the rates established under par. (a).

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 rule

175 hours

5. List with description of all entities that may be affected by the rule

Child care administrative agencies, child care providers, and parents receiving a child care subsidy under s. 49.155, Stats.

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

The child care subsidy program is funded in part by the Child Care Development Fund and must comply with the requirements of 45 CFR Part 98, including the equal access provisions related to payment rates, copayments, and payment practices in 45 CFR 98.45.

45 CFR 98.45 (a) provides that the Lead Agency shall certify that the payment rates for the provision of child care services under this part are sufficient to ensure equal access, for eligible families in the area served by the Lead Agency, to child care services comparable to those provided to families not eligible to receive CCDF assistance or child care assistance under any other Federal, State, or tribal programs.

45 CFR 98.45 (k) provides that Lead Agencies shall establish, and periodically revise, by rule, a sliding fee scale for families that receive CCDF child care services that does all of the following:

- (1) Helps families afford child care and enables choice of a range of child care options.
- (2) 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.
- (3) Provides for affordable family co-payments that are not a barrier to families receiving assistance under this part.

(4) At Lead Agency discretion, allows for co-payments to be waived for families whose incomes are at or below the poverty level for a family of the same size, that have children who receive or need to receive protective services, or that meet other criteria established by the Lead

Agency.

45 CFR 98.45 (L) (3) provides that the Lead Agency shall demonstrate in its CCDF plan that it has established payment practices applicable to all CCDF child care providers that reflect generally-accepted payment practices of child care providers that serve children who do not receive CCDF subsidies, which must include all of the following (unless the Lead Agency provides evidence in the Plan that such practices are not generally-accepted in the State or service area):

(i) Paying on a part-time or full-time basis (rather than paying for hours of service or smaller increments of time).

(ii) Paying for reasonable mandatory registration fees that the provider charges to private-paying parents.

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

None or minimal

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