

Chapter DWD 56

ADMINISTRATION OF CHILD CARE FUNDS

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Note: Sections HSS 55.70 to 55.77 as they existed on February 28, 1997 were repealed and a new chapter DWD 56 was created effective March 1, 1997.

DWD 56.01 Authority, purpose and applicability. This chapter is promulgated under the authority of s. 49.155 (1g), 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 and eligible parents.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; am. Register, November, 1999, No. 527, eff. 12-1-99.

DWD 56.02 Definitions. In this chapter:

(2) "Center slots" or "slots" means the number of places for children within the licensed capacity of a day care center.

(3) "Child care administrative agency" means a county agency, a tribal agency or any other agency which has a contract with the department to administer child care funds.

(4) "Child care funds" means funding allocated by the state to child care administrative agencies for child care purposes under s. 49.155 (1g), Stats.

(5) "Child care price" means the amount regularly charged by a provider to a parent who pays for the child care services out of his or her personal funds.

(6) "Child care provider" or "provider" means a provider licensed under s. 48.65, Stats., certified under s. 48.651, Stats., or established or contracted for under s. 120.13 (14), Stats.

(7) "Department" means the Wisconsin department of workforce development.

(9) "Employability plan" means a plan approved by a Wisconsin works agency or a food stamp employment and training program with an identified employment goal, a description of activities to be completed by the participant and a description of supportive services to be provided to the participant.

(10) "Family" has the same meaning as "Wisconsin works group" as given in s. 48.141 (1) (s), Stats.

Note: Section 48.141 (1) (s), Stats., provides: "'Wisconsin works group' means an individual who is a custodial parent, all dependent children with respect to whom the individual is a custodial parent and all dependent children with respect to whom the individual's dependent child is a custodial parent. 'Wisconsin works group' includes any nonmarital coparent or any spouse of the individual who resides in the same household as the individual and any dependent children with respect to whom the spouse or nonmarital coparent is a custodial parent. 'Wisconsin works group' does not include any person who is receiving benefits under s. 49.027 (3) (b)."

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

(12) "Foster parent" means a person required to be licensed under s. 48.62 (1)(a), Stats.

(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 com-

pensation, alimony and other maintenance payments, child support payments and veteran pensions.

(15) "Kinship care relative" has the meaning given in s. 48.57 (3m) (a), Stats.

Note: Section 48.57 (3m) (a), Stats., provides: "'Kinship care relative' means 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."

(16) "Nonmarital coparent" has the meaning given in s. 49.141 (1) (i), Stats.

Note: Section 49.141 (1) (i), Stats., provides "'Nonmarital coparent' means, with respect to an individual and a dependent child, a parent who is not married to the individual, resides with the dependent child and is either an adjudicated parent or a parent who has signed and filed with the state registrar under s. 69.15 (3) (b) 3. a statement acknowledging paternity."

(17) "Parent" has the meaning given in s. 49.155 (1) (c), Stats.,

Note: Section 49.155 (1) (c), Stats., provides: "Notwithstanding s. 49.141 (1) (j), 'parent' means a custodial parent, foster parent, treatment foster parent, legal custodian or person acting in place of a parent."

(18) "Poverty line" means the annually updated poverty income thresholds by family size published by the U.S. department of health and human services in the federal register.

(19) "Rate" means the maximum amount a county or tribal agency will pay for child care.

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

Note: Section 48.62 (1) (b), Stats., provides: "Any person who receives, with or without transfer of legal custody, 4 or fewer children into a home to provide care and maintenance and structured, professional treatment for those children shall obtain a license to operate a treatment foster home from the department, a county department or a licensed child welfare agency as provided in s. 48.75."

(21) "Tribe" means a Wisconsin American Indian tribe recognized by the federal government.

(22) "Voucher" means an authorization for reimbursement.

(23) "Wisconsin works" or "W-2" has the meaning given in s. 49.141 (1) (p), Stats.

Note: Section 49.141 (1) (p), Stats., provides: "'Wisconsin works' means the assistance program for families with dependent children, administered under ss. 49.141 to 49.161."

(24) "Wisconsin works agency" or "W-2 agency" has the meaning given in s. DWD 12.03 (38).

Note: Section DWD 12.03 (38), provides: "'Wisconsin works agency' or 'W-2 agency' means a person, county agency, tribal governing body, or a private agency contracted under s. 49.143, Stats., by the department to administer the Wisconsin works program under ss. 49.141 to 49.161, Stats., and this chapter. If no contract is awarded under s. 49.143, Stats., 'Wisconsin works agency' means the department."

(25) "Wisconsin works employment position" has the meaning given in s. DWD 12.03 (39).

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; r. (1), (8), (11), (13), (14), (15) and (16), am. (3), (4), (9), (10), and (17), cr. (15m), (16m), (20m), (23), and (24), Register, November, 1999, No. 527, eff. 12-1-99; **renum. (12), (15m), (16m) and (20m) to be (11), (15), (16), and (20), cr. (12) and (25), r. (14), Register, January, 2001, No. 541, eff. 2-1-01.**

DWD 56.03 Department of workforce development responsibilities. (1) GENERAL. The department shall maintain oversight responsibility for administration by child care administrative agencies of the child care funding program.

(2) RATE APPROVAL. The department shall review and approve the methods employed by counties and tribes for determining child care rates as required under ss. DWD 56.05 (3) and 56.06.

(3) ASSISTANCE TO COUNTIES, TRIBES AND W-2 AGENCIES. The department shall provide information and technical assistance to county, tribal and W-2 agencies regarding administration of the child care funding program.

(5) RATE REVIEW. (a) The department shall annually review child care rates set by each county and tribe and shall approve or disapprove each county agency's rates and tribal agency's rates based on the following criteria:

1. Whether the rate-setting method is in accordance with rate-setting requirements specified under ss. DWD 56.05 (3) and 56.06.

2. Whether the rate-setting method documents that the maximum allowable rates permit all eligible parents a reasonable choice of day care providers.

(b) The department may grant a variance to a nonstatutory requirement under ss. DWD 56.04 to 56.06 on written request of a county or tribal agency if the department is convinced that an alternative means meets the intent of the requirement.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; r. (4), am. (3), Register, November, 1999, No. 527, eff. 12-1-99; correction in (5) (b) made under s. 13.93 (2m) (b) 7., Stats., Register, November, 1999, No. 527.

DWD 56.04 General child care policies. (1) APPLICABILITY. This section applies to child care funding sources under s. 49.155, Stats., excluding s. 49.155 (1g), Stats., and the child care administrative agencies responsible for administration of those funds.

(3) AUTHORIZED PROVIDERS. (a) A child care administrative agency may pay for child care services provided by any of the following child care providers:

1. Providers licensed by the department of health and family services under ch. HFS 45.

2. Providers certified by a county or tribal agency under standards specified in s. DWD 55.08 or 55.09.

3. Programs established or contracted for by a school board under s. 120.13 (14), Stats.

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

1. The care is an arrangement for parents in training, orientation or counseling programs and the child care is provided at the training, orientation or counseling site.

2. The care is a short-term arrangement when a child is ill and not able to receive care from a child care provider under s. DWD 56.02 (6) or the provider has an emergency due to illness or other circumstance.

(c) A child care administrative agency may not reimburse a person legally responsible for a child under s. 49.90, Stats., for child care services.

(e) A certified in-home care arrangement may be authorized by a child care administrative agency for reimbursement only in one of the following circumstances:

1. The child has a special need.

2. Licensed or certified care is not available during the times care is needed, such as during evening hours.

3. Care is provided to 3 or more children from the same family.

4. Licensed or certified care is not available within a reasonable geographic distance.

(4) PROVISION AND PURCHASE OF SERVICE. (a) A child care administrative agency shall provide child care services directly, provide child care services by contracting with child care providers, or provide vouchers to parents for the purchase of child care services.

(b) 1. A child care administrative agency shall provide vouchers to eligible parents, as follows:

a. A child care administrative agency shall offer a voucher to each eligible parent to the extent that funds are available.

b. A voucher shall be in writing and shall authorize a parent to obtain child care services stipulated in that voucher from a provider under sub. (3).

c. The voucher shall set a maximum amount of authorized reimbursement which is no greater than the county or tribal maximum rate, minus any co-payment that the parent is required to make.

2. Parents using vouchers for the payment of child care services may receive child care services from a provider whose child care price is higher than the county or tribal maximum rate and pay the difference between the provider's child care price and the county or tribal maximum rate in addition to any required parents' co-payment.

(c) If a county or tribal agency purchases 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.

(d) A child care administrative agency shall reimburse child care providers as follows:

1. Except as provided in subd. 3., for licensed group and family day care centers, the agency shall make payments based on authorized units of service.

2. For certified providers, the agency shall reimburse for units of service used by each child, up to the maximum number of authorized units.

3. For licensed group and family day care centers, when the schedule of child care to be used is expected to vary widely, the agency may make payments 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.

(e) The department may reimburse a county, tribal or W-2 agency 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 be negotiated by the county, tribe or W-2 agency and approved by the department.

(5) ELIGIBILITY REDETERMINATION. A child care administrative agency shall redetermine parent need for service and eligibility at least every 6 months.

(6) 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) is met.

(7) RECOUPMENT AND SANCTIONS. (a) A child care administrative agency shall take all reasonable steps necessary to recoup or recover from a parent funds paid to a child care provider or to that parent when the parent was not eligible for that level of child care benefit.

(b) A child care administrative agency shall take all reasonable steps necessary to recoup or recover from a provider any overpayments made for child care services for which the provider was responsible.

(c) 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, the child care administrative agency may take one or more of the following steps:

1. The child care administrative agency may stop issuing new authorizations for child care to the provider.

2. The child care administrative agency may stop making payments to the provider until the provider has corrected the violation.

3. If the provider has not repaid an overpayment, the child care administrative agency may recover the overpayment by making an offset from current or future funds under its control that are payable to the provider.

(d) When a child care administrative agency stops authorizations or 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.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; cr. (1) (i), Register, October, 1997, No. 502, eff. 11-1-97; am. (1) (intro.), (3) (a), 1., 2. and (b) 1., (4) (a), (b) 1. and a., r. (1) (a) to (i), (2), (3) (b) 3., 4. and (3) (d), r. and recr., (4) (e), cr. (7) (c) and (d), Register, November, 1999, No. 527, eff. 12-1-99; am. (1), Register, January, 2001, No. 541, eff. 2-1-01.

DWD 56.05 County and tribal agency responsibilities. (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.

(3) **RATE-SETTING METHOD.** Each county and tribal agency shall submit a written statement to the department which describes the method by which the county or tribal agency has determined reasonable and customary child care prices and the maximum rate that the county or tribal agency will allow for the purchase of child care services. The department may prescribe standard units of service by which rates are set in order to achieve statewide consistency.

(4) **INFORMATION TO PROVIDERS.** County and tribal agencies shall distribute information to child care providers regarding child care funding policies.

(5) **WAITING LIST.** (a) If funding is not sufficient to meet the needs of all parents eligible for child care assistance under s. 49.155, Stats., a county shall establish a waiting list for parents who cannot be accommodated by available funding. The waiting list shall include a parent's name, address and phone number, priority status, the date of the parent's application, and the number and ages of children needing child care.

(b) The county shall place a parent's name on the waiting list when an application is received by phone or in writing and the parent's eligibility appears likely. Documentation of eligibility is not required before placing a name on the waiting list.

(c) The county shall at least annually update the waiting list to ensure that families on the list still need child care and are still likely to be eligible.

(d) The county shall submit information to the department upon request on the number of parents on the waiting list and the number and ages of the children on the waiting list.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; am. (1), (5) (a) and (d), r. (2), Register, November, 1999, No. 527, eff. 12-1-99.

DWD 56.06 Establishing county and tribal agency child care rates. (1) **ESTABLISHMENT OF MAXIMUM RATES.** (a) **Responsibility.** 1. Except as provided in subd. 2., a child care administrative agency shall annually set child care rates in accordance with the policies and procedures set out in this section unless the department sets maximum rates for a multicounty area which includes the particular county or tribal area.

2. A tribal agency may use the maximum rates established by a neighboring county rather than establish its own rates.

(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.

(c) **Group.** The county or tribal agency shall set separate maximum rates for the following groups of children:

1. Infants and toddlers under 2 years of age.
2. Children age 2 and older.

(d) **Types of care.** To the extent permitted by federal statutes and regulations, the rates for each group under par. (c) shall be set separately for each of the following types of care:

1. Licensed group day care centers.
2. Licensed family day care centers.
3. Level I (regular) certified family day care providers who are not in-home providers.
4. Level II (provisional) certified family day care providers who are not in-home providers.
5. Certified in-home providers.

(2) **MAXIMUM RATES.** (a) **Licensed group day care centers.** In setting maximum rates for licensed group day care centers, the county or tribal agency shall comply with the following:

1. Maximum rates shall be set so that at least 75% of the group day care center slots in the county or tribal area may be purchased at or below the maximum rate. The number of slots attributed to a center shall be equal to the center's licensed capacity.

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 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 child care price.

3. Reduced maximum rates may not be set for siblings.

(b) **Licensed Family day care centers.** In setting maximum rates for licensed family day care centers, the county or tribal agency shall comply with the following:

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.

2. Reduced maximum rates may not be set for siblings.

(c) **Certified family day care.** To the extent permitted by federal statutes and regulations, maximum rates for certified family day care shall comply with s. 49.155 (6) (b) and (c), Stats.

(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 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.

(e) **Other day care providers.** For a day care program established or contracted for by a school board or for a certified school-age day care program, the county or tribal agency shall establish maximum rates in accordance with par. (a).

(3) **HIGHER RATES.** (a) **Special need child.** A rate higher than the maximum allowed under subs. (1) and (2) may be set on a case-by-case basis for child care for a child with a special need.

(b) **Higher quality.** Rates higher than the maximum rates allowed under subs. (1) and (2) shall be paid to child care providers who meet higher quality of care standards under ss. DWD 58.03 and 58.04, up to maximums determined by the department.

(4) **SPECIAL RATES.** A county or tribal agency may set maximum reimbursement rates that are different from the rates allowed under subs. (1) and (2) for child care provided for less than a 2-week period, provided sporadically or provided for care of an ill child through negotiations with the child care provider.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; am. (1) (a) 1. and (2) (c), Register, November, 1999, No. 527, eff. 12-1-99; corrections in (3) (b) made under s. 13.93 (2m) (b) 7., Stats., Register, January, 2001, No. 541.

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. Copay-

ment 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. The copayment schedule is provided in Table DWD 56.08.

Note: This copayment schedule is current as of February 1, 2001. 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, the number of children in a given family in child care, and the type of care selected.

(b) Foster parents do not have a copayment responsibility for the foster children in their care.

(c) Kinship care relatives who are providing care for a child under court order do not have a copayment responsibility for the kinship care child in their care.

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

(d) 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 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.

(e) 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.

Note: Section 49.155 (5), Stats., provides: "An individual who is under the age of 20 and is attending high school or participating in a course of study meeting the standards established under s.115.29 (4) for the granting of a declaration of equivalency to high school graduation may not be determined liable for more than the minimum copayment amount for the type of child care received and the number of children receiving child care."

Section 49.26(1)(e), Stats., prohibits copayment responsibility for minor teen parents who are Learnfare participants.

7 USC 2015 prohibits copayment responsibility for participants in the Food Stamp Employment and Training program.

(3) ADJUSTMENTS. (a) The department may adjust the amounts in the schedule to reflect the following factors:

1. A change in child care prices or in the rates paid by county or tribal agencies.

2. A change in the amount of funds available for child care assistance.

3. A change in costs due to a change in the consumer price index.

4. A change in the federal poverty level.

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) (o), Stats.

(b) The department shall publish adjustments to the copayment schedule in the Wisconsin administrative register.

(c) If the department proposes to make adjustments to the copayment schedule that would increase parental copayments by 10% or more, the department shall promulgate an administrative rule to make such adjustments, and the department shall not issue an emergency rule to implement such adjustments before providing advance public notice of at least one month.

History: Cr. Register, September, 1997, No. 501, eff. 10-1-97; am. (3) (c), Register, December, 1997, No. 504, eff. 1-1-98; am. (1) (a) and (c), (3) (a) 5., cr. (1) (d), r. (2), Register, November, 1999, No. 527, eff. 12-1-99; r. and recr. (1), cr. (2), Register, January, 2001, No. 541, eff. 2-1-01.