

## Chapter DWD 55

## DAY CARE CERTIFICATION

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**Note:** Sections HFS 55.55 to 55.62 were renumbered to ss. DWD 55.01 to 55.09, Register, July, 1999, No. 523, eff. 8–1–99.

**DWD 55.01 Authority, purpose and applicability.**

(1) **AUTHORITY AND PURPOSE.** This chapter is promulgated pursuant to s. 46.03 (21), Stats., and implements s. 48.651, Stats. This chapter establishes standards for the certification of persons who provide child care for 1 to 3 children or who are not otherwise required to be licensed as a day care center under s. 48.65, Stats., and whose services are purchased with state or federal child care funds. The standards are intended to protect and promote the health, safety and welfare of children in the care of these providers.

**Note:** 1997 Wis. Act 27 repealed s. 46.03 (21), Stats.

(2) **APPLICABILITY.** This chapter applies to county and tribal agencies and to all providers of day care who receive reimbursement with state or federal child care funds and who are not required to be licensed under s. 48.65, Stats., including providers of child care for 1 to 3 children, providers of child care for a child in the child's home and providers of child care for school-age children.

**History:** Cr. Register, August, 1985, No. 356, eff. 9–1–85; emerg. r. and recr. eff. 7–1–96; emerg. r. and recr., eff. 7–1–96; r. and recr. Register, February, 1997, No. 494, eff. 3–1–97; renum. from HFS 55.55, Register, July, 1999, No. 523, eff. 8–1–99.

**DWD 55.02 Definitions.** In this chapter:

(1) "Agency" has the same meaning as "county or tribal agency."

(2) "Certified day care" means day care not required to be licensed under s. 48.65, Stats., as a day care center and which meets the standards under s. DWD 55.08 or 55.09 for purchase of care by county or tribal agencies.

(3) "Certified day care operator" means an individual, corporation, partnership or non-incorporated association or cooperative which has legal and financial responsibility for the operation of a day care program and for meeting the certification requirements under this chapter.

(3m) "Complaint" means an alleged violation of s. DWD 55.08 or 55.09.

(4) "County or tribal agency" means a county department of social services established under s. 46.215 or 46.22, Stats., a county department of human services established under s. 46.23, Stats., or a tribal agency.

(4m) "Day care certification worker" means a person employed by a county, a governing body of a federally-recognized American Indian tribe, or an agency under contract with a county or tribe whose duties include determination of eligibility for day care certification.

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

(6) "Family day care center" means a day care center licensed under s. 48.65, Stats., and ch. HFS 45.

(7) "Family day care provider" means a person providing care for preschool or school-age children, or both, outside their homes for less than 24 hours a day and who is not required to be licensed under s. 48.65, Stats., because the provider is caring for fewer than 4 children under 7 years old who are not related to the provider.

(8) "Group day care center" means a day care center licensed under s. 48.65, Stats., and ch. HFS 46.

(9) "Health check provider" means a provider of health assessment and evaluation services eligible to be certified under s. HFS 105.37 (1) (a), including an outpatient hospital facility, health maintenance organization, visiting nurse association, clinic operated under a physician's supervision, local public health agency, home health agency, rural health clinic, Indian health agency and neighborhood health center.

(10) "Infant" means a child under one year of age.

(11) "In-home provider" means a person caring for a child in the child's own home.

(12) "Licensed physician" means a physician licensed under ch. 448, Stats.

(13) "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."

(14) "Physician's assistant" means a health care professional certified under s. 448.04 (1) (f), Stats., and ch. Med 8.

(15) "Provider" means a person who provides child care for children.

(16) "Publicly funded parent" means a parent whose child care expenses are subsidized directly with state or federal funds.

(17) "Registered nurse" means a nurse licensed as a registered nurse under ch. 441, Stats.

(18) "Related to the provider" means the provider's natural or adopted children, foster children, stepchildren, grandchildren, brothers, sisters, first cousins, nephews, nieces, uncles and aunts.

(19) "School-age child" means a child 7 years of age or older who is enrolled in a public school or a parochial or other private school.

(20) "School-age day care program" means a program providing care and supervision in other than a provider's home for less than 24 hours a day for 7 or more school-age children and which is exempt from being licensed as a day care center under s. 48.65 (1), Stats.

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

(22) "Wisconsin works participant" or "W-2 participant" means an individual participating in the Wisconsin works program administered under ss. 49.141 to 49.161, Stats.

**History:** Cr. Register, August, 1985, No. 356, eff. 9–1–85; r. and recr. Register, December, 1991, No. 432, eff. 1–1–92; emerg. r. and recr. eff. 7–1–96; r. and recr., Register, February, 1997, No. 494, eff. 3–1–97; renum. from HFS 55.56; r. and recr. (1) and am. (4) and (22), Register, July, 1999, No. 523, eff. 8–1–99; correction in (6) and (13) made under s. 13.93 (2m) (b) 7., Stats., Register, July, 1999, No. 523; CR 02–007: am. (1) and (4), cr. (3m) and (4m) Register May 2002 No. 557, eff. 6–1–02.

**DWD 55.03 Conditions for child care reimbursement.**

**History:** Cr. Register, August, 1985, No. 356, eff. 9–1–85; emerg. r. and recr. eff. 7–1–96; r. and recr. Register, February, 1997, No. 494, eff. 3–1–97; renum. from HFS 55.57 and am. (2) (c), Register, July, 1999, No. 523, eff. 8–1–99; **CR 06–044: r. (1) and (2) (a) and (b), renum. (2) (c) and (d) to be DWD 56.04 (1) (b) 3. and 4., Register November 2006 No. 611, eff. 12–1–06.**

**DWD 55.04 Certification. (1) BASIS FOR CERTIFICATION.**

In order to be certified, a day care provider shall be exempt from having to be licensed under s. 48.65, Stats., and shall comply with

the appropriate standards for the type of certified provider that are specified in this subchapter.

**(2) TYPES OF CERTIFIED PROVIDERS.** The following types of day care providers shall be certified as a condition for receiving state or federal child care funds:

(a) *Family day care providers and in-home providers.* Family day care and in-home providers are required to meet the standards under s. DWD 55.08 and may care for preschool children or school-age children or a combination of preschool and school-age children consistent with Table 55.08 (6).

(b) *School-age day care programs.* School-age day care programs are required to meet the standards under s. DWD 55.09.

**(3) APPLICATION FOR CERTIFICATION.** (a) *Form.* Application for certification shall be made on a form available from the county or tribal agency in the county or tribal territory where the child care is provided. The applicant shall submit the completed form to that county or tribal agency.

(b) *References.* The applicant shall submit with the application the names and addresses of at least two persons, not related to the applicant, who can attest to the applicant's good character and ability to care for children. The county or tribal agency shall require references of all applicants and shall contact references by phone or letter prior to granting initial certification.

(c) *Criminal background.* The applicant shall comply with the background information requirements of s. 48.685, Stats.

**Note:** Background character verification forms may be obtained from Department of Workforce Development, Communications Section, P. O. Box 7935, Madison, WI 53707-7935.

(d) *Compliance with standards and certification.* The county or tribal agency shall process all certification applications as follows:

1. If the application is for certification under sub. (2) (a), the county or tribal agency shall review the application for compliance with standards under s. DWD 55.08 prior to issuing a certificate.

2. If the application is for certification under sub. (2) (b), the county or tribal agency shall refer the application to a licensing representative in the department of health and family services regional office. The licensing representative shall determine whether the applicant is in compliance with all standards under s. DWD 55.09 and report back to the county or tribal agency. The county or tribal agency may issue a certificate based on the licensing representative's report.

(e) *Approval.* Within 60 days after receiving a completed application for certification or recertification, the county or tribal agency shall either approve the application and issue a certificate or deny the application. If an application is denied, the county or tribal agency shall give the applicant the reasons, in writing, for denial.

**(4) CERTIFICATION FEE.** A county or tribal agency may charge a fee for day care certification not to exceed 150 percent of the licensing fee for a day care center that provides care and supervision for 4 to 8 children, under s. 48.65 (3) (a), Stats., plus the costs of criminal record checks required under s. 48.651 (2), Stats.

**Note:** 1997 Wis. Act 27 repealed s. 48.651 (2), Stats.

**(5) CATEGORIES OF CERTIFICATION.** Certification of a provider by a county or tribal agency shall be Level I (regular) or Level II (provisional) as follows:

(a) *Level I (regular) certification.* Level I (regular) certification may be issued only after the provider has demonstrated compliance with all certification standards including training. Level I (regular) certification shall be for a period of 2 years and shall be renewed upon application if the provider continues to comply with the certification standards under s. DWD 55.08 or 55.09.

(b) *Level II (provisional) certification.* Level II (provisional) certification may be issued only after the provider has demonstrated compliance with all certification standards under s. DWD

55.08, except standards for training under s. DWD 55.08 (1) (b). Level II (provisional) certification shall be for a period of 2 years and shall be renewed upon application if the provider continues to comply with the certification standards, except standards for training under s. DWD 55.08 (1) (b).

**(6) CERTIFICATION AGENCY.** (a) The county or tribal agency responsible for certification of a provider shall be determined by the geographic area in which the child care is provided.

(b) Certification issued to a provider by a county or tribal agency shall be accepted as valid by all other agencies authorized to certify providers.

(c) The county or tribal agency shall ensure that each new day care certification worker completes the department-approved certification training during the first 6 months of employment.

**(7) COMPLIANCE.** (a) *Qualifications of providers.* County and tribal agencies shall maintain records demonstrating provider compliance with s. DWD 55.08 (1).

(b) *Compliance with other standards.* 1. 'General.' County and tribal agencies shall help assure provider compliance with s. DWD 55.08 (2) to (12) in accordance with this paragraph.

2. 'Required procedures.' A county or tribal agency shall:

a. Require receipt of a signed application from the provider agreeing to follow day care certification standards.

b. Provide a checklist of basic day care certification standards and procedures for filing a complaint to all parents who are using certified family day care or in-home care and who are publicly funded parents.

c. Provide information on child care and the certification system to applicants prior to initial certification. The information shall include materials on sudden infant death syndrome, child development, positive discipline, health and safety, and nutrition.

**Note:** Contact Wisconsin Child Care Information Center at 1-800-362-7353 for information on available materials.

d. Conduct an on-site inspection of the place where child care will be provided before certification or within 30 days following initial certification, recertification, or a provider's move to a new location.

e. Check the criminal record history for applicants for certification, for employees and prospective employees including substitutes, and for adults living in the applicant's home as specified in s. 48.651 (2), Stats.

**Note:** 1997 Wis. Act 27 repealed s. 48.651 (2), Stats.

f. Check files on child abuse and neglect findings or pending investigations related to applicants, employees and prospective employees including substitutes, and for individuals living in the applicant's home.

g. Provide basic health and safety information to the applicant.

h. Request a statement from the appropriate regulating agency indicating that the regulating agency approves a child care business in the applicant's home if the applicant has a separate license or certification to care for children or adults, including foster care or adult care. The request shall include a request for permission for the licensed or certified caregiver to release information necessary for a criminal history record search for residents and clients in the applicant's home.

3. 'Optional procedures.' A county or tribal agency may:

a. Conduct on-site inspections at any time prior to or after certification to monitor compliance with certification standards, in addition to the required inspection under subd. 2. d.

b. Make certification available to all family day care providers, whether or not public funding is involved.

c. Request that all parents whose children are cared for by a certified provider under this subchapter complete the answers to questions on the checklist and return the checklist provided under subd. 2. b.

d. Update provider references at certification renewal.

4. 'Exception.' The department may grant an exception to the required procedure under subd. 2. e. if the department determines that the alternative procedure meets the intent of the requirement.

**(8) EXCEPTIONS TO PARTICULAR CERTIFICATION REQUIREMENTS.** A county or tribal agency may grant an exception to any standard in s. DWD 55.08 or 55.09 if the county or tribal agency determines that an alternative means meets the intent of the requirement, except for rules related to criminal background investigation required under s. 48.685, Stats.

**(9) CERTIFICATION DECISION AFTER BACKGROUND REVIEW.** The county or tribal agency shall conduct background reviews in accordance with s. 48.685, Stats. For guidance in resolving issues that arise in particular cases, the county or tribal agency shall follow ch. HFS 12, and the crimes table incorporated into ch. HFS 12, and shall apply the standards that apply to licensed day care facilities.

**History:** Cr. Register, August, 1985, No. 356, eff. 9-1-85; am. (4) (b), Register, November, 1987, No. 383, eff. 12-1-87; renum. (5) to be (6), cr. (5), Register, December, 1991, No. 432, eff. 1-1-92; emerg. r. and recr. eff. 7-1-96; r. and recr. Register, February, 1997, No. 494, eff. 3-1-97; renum. from HFS 55.58, am. (2) (a) and (b), (3) (c), (d) 1. and 2., (5) (a) and (b), (7) (a) and (b) 1., and (8) and cr. (9), Register, July, 1999, No. 523, eff. 8-1-99; CR 02-007: am. (3) (b), (5) (a), (b), (7) (b) 2. c., d., and (9), r. (3) (f), cr. (6) (c), (7) (b) 2. h., and 3. d. Register May 2002 No. 557, eff. 6-1-02.

**DWD 55.05 Criminal history and child abuse record search.** (1) The county or tribal agency shall follow the requirements for criminal history and child abuse record search that are contained in s. 48.685, Stats., and ch. HFS 12, and the crimes table incorporated into ch. HFS 12, and shall apply the standards that apply to licensed day care facilities, except the county or tribal agency shall require any prospective or current employee, contractor under the control of the certified day care provider, or non-client resident who has or is expected to have access to clients to submit the completed background information form to the county or tribal agency. In applying the provisions relating to rehabilitation decisions, all decisions and review procedures shall be made and conducted by the county or tribal agency.

**Note:** Detailed information on ch. HFS 12, Wis. Adm. Code, may be obtained by calling the Office of Child Care at (608) 266-9703 or by sending a written request to the Office of Child Care at P.O. Box 7935, Madison WI 53707. In addition, the DHFS requirements are posted by the Department of Health and Family Services at the following web site address: <http://www.dhfs.state.wi.us/caregiver/index.htm>.

(2) Each county or tribal agency shall maintain its records concerning each person whose certificate is denied, revoked, or not renewed for a reason specified in s. 48.685 (4m) (a) 1. to 5., Stats. The county or tribal agency shall report this information to the department's office of child care. The county or tribal agency shall immediately report the receipt of an application for rehabilitation review and the results of each rehabilitation review to the office of legal counsel of the department of health and family services.

(3) The county or tribal agency may deny, suspend, revoke, or refuse to renew certification and discontinue payment for care if the certified day care operator, day care program employee, provider, assistant to the provider, substitute provider, or person living in the family day care provider's home is the subject of a court finding that the person has abandoned his or her child; has inflicted emotional damage or sexual or physical abuse on a child; or has neglected or refused, for reasons other than poverty, to provide necessary care, food, clothing, medical or dental care, or shelter so as to seriously endanger the physical health of a child.

**Note:** The application for rehabilitation review and the results of the rehabilitation review should be sent to the following address: Office of Legal Counsel, Department of Health and Family Services, 1 W. Wilson St., Room 651, P.O. Box 7850, Madison, WI 53701-7850.

**History:** Cr. Register, August, 1985, No. 356, eff. 9-1-85; emerg. r. and recr. eff. 7-1-96; r. and recr. Register, February, 1997, No. 494, eff. 3-1-97; renum. from HFS 55.59 and r. and recr., Register, July, 1999, No. 523, eff. 8-1-99; cr. (4) and (5), Register, November, 1999, No. 527, eff. 12-1-99; CR 02-007: am. (1) and (2), r. and recr. (3), r. (4) and renum. (5) to be s. DWD 55.06 (1) Register May 2002 No. 557, eff. 6-1-02.

**DWD 55.06 Certification denial.** (1) The county or tribal agency may deny, suspend, revoke or refuse to renew certification and discontinue payment for care if any of the following apply:

(a) The provider is not in compliance with certification standards under s. DWD 55.08 or 55.09, as appropriate.

(b) The provider's references or other community information does not support the provider's declaration that he or she is able to provide an acceptable level of child care.

(c) The county or tribal agency determines there is danger to the health, safety or welfare of the children in care.

(d) The provider submits false attendance records to the child care subsidy administrative agency.

(e) The provider fails to cooperate with the certifying agency.

(f) The applicant's license or certificate to care for children or adults has been denied or revoked.

(g) The provider misrepresents or withholds information.

(h) The provider denies the day care certification worker access to the premises to monitor compliance with the certification standards.

(2) The certifying agency shall require a provider to submit a new application for certification if the provider's previous certification was denied, revoked, or not renewed for a reason in s. DWD 55.05 or s. DWD 55.06 (1). The certifying agency may refuse to accept a new application for 2 years after the date of the denial, revocation, or refusal to renew the certification.

(3) A provider whose certification has been revoked twice for noncompliance with the certification standards in s. DWD 55.08 or 55.09 shall be permanently barred from certification.

(4) If a county or tribal agency denies, suspends, revokes or refuses to renew a certification, the county or tribal agency shall notify the provider in writing and give reasons for the action. The action is reviewable pursuant to ch. 68, Stats., which provides for administrative review of the decisions of local agencies. Tribal agencies shall use an appeal process equivalent to the process in ch. 68, Stats.

**History:** Cr. Register, August, 1985, No. 356, eff. 9-1-85; emerg. r. and recr. eff. 7-1-96; r. and recr. Register, February, 1997, No. 494, eff. 3-1-97; renum. from HFS 55.60, Register, July, 1999, No. 523, eff. 8-1-99; CR 02-007: renum. and am. s. DWD 55.06 to be sub. (4), cr. (1) (d), (e), (g), (h), (2) and (3) Register May 2002 No. 557, eff. 6-1-02.

**DWD 55.07 Complaints.** Within 10 working days after a county or tribal agency receives a complaint by telephone, letter or personal contact about a certified day care provider, the county or tribal agency shall investigate that complaint.

**History:** Cr. Register, December, 1991, No. 432, eff. 1-1-92; emerg. r. and recr. eff. 7-1-96; r. and recr. Register, February, 1997, No. 494, eff. 3-1-97; renum. from HFS 55.605, Register, July, 1999, No. 523, eff. 8-1-99.

**DWD 55.08 Standards for family day care and in-home day care.** (1) **QUALIFICATIONS OF PROVIDERS.** (a) *Ability, age and health.* 1. A provider shall be physically and emotionally able to provide responsible child care and shall be at least 18 years of age.

2. A provider, household member, volunteer, visitor or parent who has symptoms of illness or of a communicable disease reportable under ch. HFS 145 that may be transmitted through normal contact, or whose behavior or mental or physical condition gives reasonable concern for the safety of the children, may not be in contact with the children in care.

3. A provider shall demonstrate that he or she is free from tuberculosis prior to certification. The agency may accept results of a test administered up to 12 months before the application date.

(b) *Training.* 1. 'Level I (regular) and Level II (provisional).' All providers and all employees, substitutes, and volunteers of a provider who provide care and supervision for children under one year of age shall receive training in the most current medically accepted methods of preventing sudden infant death syndrome

before the date on which the provider is certified or the employment or volunteer work commences.

2. 'Level I (regular).' The following apply to Level I (regular) certified providers:

a. A Level I (regular) certified provider under s. DWD 55.04 (5) (a) shall have completed 15 hours of child care training approved by the county or tribal agency responsible for certification prior to Level I (regular) certification. The training shall include information on child growth and development, positive discipline, child abuse and neglect, interpersonal relationships, daily schedule, health and safety, sudden infant death syndrome, business practices, and nutrition.

b. A county or tribal agency may require up to 5 hours of annual continuing education by a Level I (regular) certified provider each year following Level I (regular) certification.

(c) *Reporting changes.* A certified provider shall report immediately to the certifying agency any changes that affect the certified provider's eligibility for certification under this chapter, including changes in individuals living in the household.

**(2) THE HOME FOR PROVIDING FAMILY DAY CARE.** A provider's home and outside play areas shall meet the following requirements:

(a) Each floor level used for child care shall have at least one unblocked exit and at least one smoke detector.

(b) All areas used for child care shall have adequate and safe heat, light and ventilation.

(c) The home shall be free of hazards and items that shall be kept inaccessible to the children include, but are not limited to, the following:

1. Medications and drugs.
2. Cleaning supplies, poisons, and insecticides.
3. Guns, ammunition, knives, scissors, and sharp objects.
4. Matches, cigarette lighters and flammable liquids.
5. Plastic bags.
6. Litter and rubbish.

(cm) Fire arms and ammunition materials shall be stored in separate, locked areas that are inaccessible to children.

(d) Indoor and outdoor areas used for child care shall include sufficient space for play and for activities that meet the developmental needs of the children in care.

(e) Outdoor play areas shall be free of hazards and shall be fenced or the provider shall take special measures to ensure the safety of the children, including the following:

1. Concrete and asphalt shall be prohibited under climbing equipment, swings, and slides.
2. In-ground pools, on-ground pools with rigid sides, hot tubs, and large outdoor trampolines may not be used during hours of care and shall be inaccessible to children by use of a permanent barrier or other preventive measure.
3. Wading pools may be used if the water is changed daily and the pool is disinfected daily. In this subdivision, "wading pool" means a shallow pool, capable of being dumped to change water, and used primarily for small children.

(f) Pets that are kept in the home shall be tolerant of children and vaccinated against rabies. Pets that may pose any risk to the children shall be restricted from indoor and outdoor areas used for day care.

(g) The home shall have at least one telephone in working order with a list of emergency numbers posted by each telephone, including numbers for the rescue squad, police, fire station, emergency medical care, and poison control center. The certifying agency may prohibit the use of a cellular phone as a primary phone. If a cellular phone is used as a primary phone, it shall be operational during the hours of child care.

(i) The home shall be clean, uncluttered and free of insects and rodents.

(j) Bathrooms, including toilets, sinks and potty chairs, shall be clean and in good working condition.

(k) When a public water supply is not available, the water shall be tested and found to be bacteriologically safe and to have safe nitrate levels by a laboratory certified under 42 CFR 493 (CLIA) prior to or within 3 months of initial certification and at least every 2 years.

(L) Areas, equipment and utensils for food preparation, serving and clean-up shall be kept clean and sanitary.

(m) Children may not share cups, eating utensils, washcloths or towels.

(n) Smoking shall be prohibited in any indoor or outdoor area in which children are present.

(o) If the child care is provided in a rental property, the provider shall obtain permission from his or her landlord to operate a child care business.

**(3) THE HOME FOR PROVIDING IN-HOME CARE.** When a provider cares for children in the children's own home, the provider shall comply with requirements in sub. (2) (c), (e), (L) and (n), but the provider is not required to comply with requirements in sub. (2) (a), (b), (d), (f), (g), (i), (j), (k) and (m).

**(4) CHILD HEALTH CARE.** (a) Except as provided under pars. (c) and (d), a certified provider shall have a current report of a physical examination on file for each child, including each provider's child in care, as follows:

1. For a child under 2 years of age, a report of a physical examination conducted not more than 6 months prior to nor later than 3 months after the child is admitted, and a follow-up health examination at least once every 6 months after admission.

2. For a child 2 years of age or older, a report of a physical examination conducted not more than 2 years prior to nor later than 3 months after the child is admitted.

(b) The physical examination report shall be signed and dated by a licensed physician, a physician's assistant or a health check provider.

(c) The requirement under par. (a) does not apply to a provider who requests from the county or tribal agency in writing an exemption for a child based upon adherence by the child's parent to religious belief in exclusive use of prayer or spiritual means for healing.

(d) The requirement under par. (a) does not apply to school-age children. Notwithstanding s. DWD 55.02 (19), in this paragraph, "school-age children" means children 5 years of age or older who are enrolled in kindergarten or a higher grade in a public or private school.

(e) The provider shall have on file a written record verifying that each child in care has been immunized in accordance with s. 252.04, Stats., and ch. HFS 144.

(f) The provider may administer medication to a child only in accordance with written and signed permission from the child's parent.

(g) The provider shall wash his or her hands with soap and warm running water after toileting, prior to food preparation and after diapering children.

(h) The provider shall require all children in the provider's care to wash their hands with soap and warm running water before eating and after toileting.

(i) The provider shall change a child's diaper on an easily cleanable surface that is cleaned with soap and water and a disinfectant solution after each use.

(j) The provider shall clean a child's superficial wound with soap and water only and protect it with a band-aid or bandage.

(5) SUPERVISION. (a) The provider may not be engaged in any other activity or occupation during the hours of operation which interferes with the adequate care and supervision of children.

(b) The provider shall be awake whenever the children in care are awake.

(c) No individual provider may take care of children for more than 16 hours in any 24-hour period. The 16-hour period includes any combination of care by a provider who is both licensed as a family day care provider and certified as a family day care provider.

(d) The provider shall ensure that each child has adult supervision at all times.

(e) The provider shall ensure that no person under 18 years of age is left in sole charge of the children.

(f) The provider and any other adult working with children may not consume or be under the influence of alcoholic beverages or any non-prescribed controlled substance specified in ch. 961, Stats., during the hours of operation.

(g) No person in the home of a provider may consume or be under the influence of alcoholic beverages or any non-prescribed controlled substance specified in ch. 961, Stats., during the hours of operation in the presence of children.

(h) A provider may not allow any person whom the provider determines to be a threat to the health or safety of the children to have contact with the children in the provider's care.

(i) The provider shall keep a written record of the daily hours of attendance of each child in care, including the arrival and departure time for each child. Attendance records shall be kept for at least 3 years.

(6) MAXIMUM NUMBER OF CHILDREN. (a) A certified provider may take care of no more than 3 children under the age of 7 who are not related to the provider.

(b) A certified provider may take care of no more than 6 children, including children related to the provider, except that:

1. If 3 of the children are under the age of 2, the total number of children may not exceed 5.

2. If 4 of the children are under the age of 2, the total number of children may not exceed 4.

(c) A provider's natural, adopted or foster children 7 years of age or older are not counted in determining the maximum number of children allowed under par. (b).

(d) The maximum number of children that the provider may care for is shown in Table 55.08 (6) A and B.

**Table 55.08 (6)**

MAXIMUM NUMBER OF CHILDREN IN CERTIFIED DAY CARE			
Related Children Under 7 years of Age	Non-related Children		Maximum Number of Children*
	Under 7 years of age	Additional Children Ages 7 and older	
0	3		6
1	3		6
2	3		6
3	3		6
4	2		6
5	1	Additional children ages 7 through 12 (if special needs up to 19) may be cared for as long as the maximum total number of children is not exceeded	6
6	0		6

**WHEN CHILDREN UNDER THE AGE OF 2 YEARS ARE PRESENT**

Number of Children Under 2 Years of Age	Maximum Number of Children*
0	6
1	6
2	6
3	5
4	4

\*The maximum number does not include the provider's natural, adopted or foster children 7 years of age and older.

**Note:** Under s. 48.65 (1), Stats., if a provider takes care of 4 or more children under the age of 7 who are not related to the provider, for compensation, the provider must obtain from the department a license to operate a day care center.

(7) PROVIDER INTERACTIONS WITH CHILDREN. The provider shall interact with the children in a caring and positive manner and:

(a) Shall protect children in care from danger and be aware of where each child is at all times.

(b) May not hit, spank, pinch, shake or inflict any other form of corporal punishment on the child, or use any discipline that is frightening to the child, including binding or trying to restrict the child's movement or enclosing the child in a confined space such as a closet, basement, locked room, box, or similar cubicle.

(c) May not verbally abuse or threaten a child or make derogatory remarks about the child or the child's family.

(d) Shall provide positive guidance and redirection for the children and set clear limits for the children.

(e) Shall help each child develop self-control, self-esteem, and respect for the rights of others.

(f) May not use time-out periods that exceed 5 minutes. For purposes of this paragraph, a "time-out" is an interruption of unacceptable behavior by the removal of the child from the situation.

(g) May not punish a child for lapses in toilet training.

(h) Shall respond promptly to a crying infant or toddler's needs.

(i) Shall provide physical contact and attention to each infant and toddler throughout the day, including holding, rocking, talking to, singing to, and taking on walks inside and outside the home.

(j) Shall periodically change the position and location in the room of a non-walking child who is awake.

(8) ACTIVITIES AND EQUIPMENT. (a) The provider shall implement a program of learning and play activities. Activities shall include:

1. A balance of active and quiet play for each child daily.

2. Both indoor and, weather permitting, outdoor activities for each child daily, including infants and toddlers.

3. Opportunities and encouragement for each child to play with a variety of toys and equipment.

4. Reading to the children each day.

5. Opportunities for each child to be involved in a variety of activities during a week, including opportunities for play that enhance creativity, language development, use of large and small motor skills, and imagination.

6. Activities specifically for children under one year of age, if these children are present.

7. Activities specifically for children from one to 2 years of age and for children 2 years and older, if these children are present.

8. Opportunities for a non-walking child who can creep or crawl to move freely in a safe, clean, open, warm, and uncluttered area during each day.

(b) A provider may use television only to supplement the daily plan for children. No child may be required to watch television.

**(9) TRANSPORTATION.** When transporting children the provider shall ensure that:

- (a) The driver of the vehicle holds a valid operator's license.
- (b) The vehicle is registered in Wisconsin.
- (c) Each child is seated and properly restrained in a seat belt or, for a child under 4 years of age, a child safety restraint system, in compliance with s. 347.48 (2m) and (4), Stats.
- (d) A written permission slip signed by a parent or guardian is on file.
- (e) Children are not left unattended in a vehicle.

**(10) MEALS AND SNACKS.** The provider shall ensure that each child receives proper nourishment while in day care as follows:

- (a) Each child shall be served one meal or snack at least once every 3 hours.
- (b) Each child in attendance for 4 or more hours shall be served a noon or evening meal which consists of a protein food, fruit and vegetable, a cereal or bread product and pasteurized grade A vitamin D milk.
- (c) Each infant who is unable to hold his or her own bottle shall be held for bottle feeding. Bottles may not be propped.

**(11) REST.** The provider shall ensure that each child has a clean, comfortable and safe place to rest as follows:

- (a) Each child shall be allowed to have undisturbed rest or a nap, when needed, in a place that is clean, safe and comfortable.
- (b) Each child shall have a personal clean sheet or blanket or both and pillowcase if a pillow is used.
- (c) To reduce the risk of sudden infant death syndrome, each infant shall be placed to sleep on his or her back, unless otherwise directed by the child's physician. All sleeping arrangements for children under one year of age shall use firm mattresses and may not use soft bedding materials, such as comforters, pillows, fluffy blankets, or stuffed toys.

(d) A safe crib or playpen shall be available for each child under one year of age to use for napping.

**(12) PROVIDER AND PARENT COMMUNICATION.** The provider shall be in ongoing communication with a child's parent by:

- (a) Allowing parents to visit and observe the program of child care during any hours that care is being provided.
- (b) Talking to each child's parent at least once a week about his or her child's development, activities, likes and dislikes.
- (c) Developing written information that specifies the charge for child care and the expected frequency of payment for the service.
- (d) Making a copy of the applicable certification standards available to each parent.
- (e) Displaying a copy of the certificate in an area easily seen by parents and visitors.
- (f) Using an enrollment form that includes:
  1. The parents' home and work phone numbers.
  2. The parents' signed consent for emergency medical care.
  3. A name and number to call if the child requires emergency medical care.
- (g) Using information obtained on the department-provided "day care intake for child under 2 years" form, which collects essential information for infants and toddlers, to individualize the program of care for each child under 2 years of age.
- (h) Informing a child's parent of any disciplinary action taken or any injury to the child that occurred during day care hours.
- (i) Informing the parent in writing whether the premises are covered by a day care liability insurance policy.

**(13) DISCRIMINATION PROHIBITED.** The provider shall not discriminate on the basis of race, color, sex, sexual orientation, creed, handicap or national origin or ancestry in accepting children or in the employment of employees.

**(14) MANDATORY CHILD ABUSE REPORTING.** A provider who has reasonable cause to suspect that a child in his or her day care has been abused or neglected or that the child has been threatened with abuse or neglect and that abuse or neglect will occur shall immediately inform the county social or human services department, local law enforcement, or other organization designated in s. 48.981, Stats.

**(15) MONITORING COMPLIANCE.** The provider shall permit a day care certification worker to conduct home inspections to monitor compliance with the certification standards.

**History:** Cr. Register, August, 1985, No. 356, eff. 9-1-85; emerg. r. (1) (d), eff. 11-5-85; r. (1) (d), Register, April, 1986, No. 364, eff. 5-1-86; r. and recr. (1) (a), (b), (2) (L), (4), (5) and (8), r. (1) (c), Register, December, 1991, No. 432, eff. 1-1-92; emerg. r. and recr. eff. 7-1-96; r. and recr. Register, February, 1997, No. 494, eff. 3-1-97; reprinted to insert dropped copy in (4) and (5), corrections made in (1) (a) made under s. 13.93 (2m) (b) 7., Stats., Register, July, 1997, No. 499; renum. from HFS 55.61, cr. (2) (n) and (5) (i) and am. (3) and (6) (d), Register, July, 1999, No. 523, eff. 8-1-99; correction in (2) (k) and (5) (f) made under s. 13.93 (2m) (b) 7., Stats, Register, July, 1999, No. 523; CR 02-007: am. (1) (a) 3., (2) (c) (intro.), 2., 3., (d), (e) (intro.), (f), (g), (k), (5) (i), (6), (7) (b), (8) (a) 2., 3., and (12) (c) and (f) (intro.), renum. and am. (1) (b) 1. to be (1) (b) 2. a. and (8) (a) 4. to be (8) (a) 5., cr. (1) (b) 1., 2. (intro.), (2) (cm), (e) 1., 2., 3., (o), (4) (i), (j), (7) (d) to (j), (8) (a) 4., 8., (9) (d), (e), (11) (c), (d), (12) (g), (h), (i), (14), and (15), renum. (1) (b) 2. to be (1) (b) 2. b., (8) (a) 5. and 6. to be (8) (a) 6. and 7., and r. (2) (h) Register May 2002 No. 557, eff. 6-1-02.

### DWD 55.09 Standards for school-age programs.

**(1) CONDITIONS FOR CERTIFICATION.** School-age day care programs shall meet the standards set out in this section in order to be certified.

**(2) PERSONNEL.** (a) *Director.* Each school-age day care program shall have a person designated as director. The director shall:

1. Be at least 21 years of age.
2. Have had at least one year of child care or administrative experience with preschool or school-age children or have completed 36 classroom hours or 3 credits of training in at least one of the following areas: child development, early childhood education, elementary education, child guidance, physical education, recreation or other department-approved area.

(b) *Program leader.* A program leader shall be designated by the program director to plan and implement the daily activities for a designated group of children. The program leader shall:

1. Be at least 18 years old.
2. Have completed high school or its equivalency.
3. Have had 80 working days experience working with school-age children.
4. Have completed 10 classroom hours of training in at least one of the following areas: child development, early childhood education, elementary education, child guidance, physical education, recreation or other department-approved area.

(c) *Program assistant.* A program assistant shall:

1. Work under the supervision of a program leader.
2. Be at least 18 years old.
3. Have completed or be enrolled in 10 classroom hours of training in at least one of the following areas: child development, early childhood education, elementary education, child guidance, physical education, recreation or other department-approved area.

(d) *Substitutes.* 1. In the absence of a regular staff member, there shall be a similarly qualified substitute who is at least 18 years old.

2. When the regular staff member is not expected to be absent for more than 3 days, a person not meeting the educational qualifications under par. (a), (b) or (c) may substitute for the regular staff member if a qualified person is not available.

(e) *Staff records.* The school-age day care program shall maintain a record for each employee which shall be available to the county or tribal agency and includes:

1. The name, address, date of birth, education, position, names and addresses of employers in previous work experience

in child care, the name, address and telephone number of a person to be notified in an emergency.

2. Evidence that the employee is free from tuberculosis.
3. Documentation of educational qualifications for the position.

**(3) ORIENTATION.** Each school-age program shall develop and implement an orientation session which shall be given to all new staff and volunteers in the first week that they are working in the program. The orientation session shall include all of the following:

- (a) Review of health, nutrition and discipline policies.
- (b) Review of plans for evacuation and other emergencies.
- (c) Training in emergency procedures and use of first-aid.
- (d) Review of all applicable parts of this subchapter.
- (e) Review of the school-age program's activity schedules.
- (f) Training in the recognition of signs of child abuse and neglect and explanation of responsibilities for reporting suspected cases of child abuse or neglect.

- (g) Explanation of job responsibilities and job descriptions.
- (h) Training in the recognition of childhood illnesses.

**(4) FACILITY.** (a) *General rules.* 1. A school-age program shall consult local authorities to obtain any required zoning clearances or building permits.

2. There shall be a report of inspection filed in the licensing office of the department of health and family services' regional office which indicates approval of the building by the state department of commerce or by a certified agent of that department. The building shall comply with applicable state and local building codes.

(b) *Indoor space.* 1. The space used by children shall be no less than 35 square feet (3.3 sq. meters) of usable floor space per child.

2. The indoor area shall be free of hazards, and items that may be harmful to children such as medications, drugs, poisons, insecticides, weapons, matches, cigarette lighters and flammable liquids shall be kept out of reach of the children.

(c) *Swimming pool.* A school-age program that has a swimming pool on its premises shall do all of the following:

1. Comply with the requirements of chs. Comm 90 and HFS 172, relating to swimming pool safety.

2. Maintain a ratio of one person qualified by Red Cross, Boy Scouts, Young Men's Christian Association or other generally accepted lifesaving certificate for every 25 children in the water.

**(5) CHILD HEALTH CARE.** (a) Within 30 days after a child is enrolled, the program shall have on file a health history for that child.

(b) The program shall isolate any ill child and contact the parent or designated responsible person as soon as possible to arrange for removal of the child from the program.

(c) The provider may administer medication to a child only in accordance with written and signed permission from the child's parent.

(d) Pets that are kept on the premises shall be tolerant of children and vaccinated against rabies.

(e) Each staff member shall wash his or her hands with soap and warm running water after toileting and prior to food service and preparation.

(f) All children in care shall wash their hands with soap and warm running water before eating and after toileting.

(g) Smoking shall be prohibited in any indoor or outdoor area in which children are present.

**(6) STAFFING AND GROUPING.** (a) At least one person meeting the qualifications of a school-age program leader shall supervise each group of children.

- (b) No group may contain more than 32 children.

(c) There shall be at least one staff member for every 16 children.

(d) Children who are relatives of staff shall be counted in the group size and ratio calculations.

(e) In a program with 10 or more children present, there shall be at least 2 adults available at all times on the premises.

(f) The provider shall keep a written record of the daily hours of attendance of each child in care.

**(7) EMERGENCIES.** (a) A program shall have a phone in working order to which the staff has access and a list of emergency phone numbers posted on or near the phone. The list shall include numbers for the rescue squad, police, fire station, emergency medical care and poison control center.

(b) A program shall have on file:

1. The parents' home and work phone numbers.
2. The parents' signed consent for emergency care.
3. A name and number to call if a child requires emergency medical care.

(c) The program shall maintain first-aid supplies and staff shall wash superficial wounds with soap and water before bandaging.

**(8) SANITATION.** (a) The premises shall be clean, uncluttered and free of insects and rodents.

(b) Bathrooms, including toilets and sinks, shall be clean and in good working condition.

(c) When a public water supply is not available, the water shall be tested and found to be bacteriologically safe and to have safe nitrate and lead levels by the state laboratory of hygiene or a laboratory certified under 42 CFR 493 (CLIA) prior to or within 3 months of initial certification and at least every 2 years.

(d) Areas, equipment and utensils for food preparation, serving and clean-up shall be kept clean and sanitary.

(e) Children may not share cups, eating utensils, washcloths or towels.

**(9) STAFF INTERACTIONS WITH CHILDREN.** Staff shall interact with the children in a caring and positive manner and:

(a) Shall protect children in their care from danger and be aware of where each child is at all times.

(b) May not hit, spank, pinch, shake or inflict any other form of corporal punishment on a child, or use any discipline which is frightening to the child.

(c) May not verbally abuse or threaten a child or make derogatory remarks about the child or the child's family.

**(10) ACTIVITIES AND EQUIPMENT.** (a) The program shall implement a schedule of activities which include:

1. A variety of activities which ensure that each child is involved in both active and quiet play.

2. Opportunities for each child to use a variety of materials and equipment.

3. Opportunities for each child to be involved in a variety of activities during a week and to select and plan his or her own activities.

(b) Television viewing, if part of the activities, may not exceed one hour a day per child and shall be appropriate for the children in care.

**(11) MEALS AND SNACKS.** (a) A program operating for less than 4 hours shall ensure that each child is served a snack.

(b) A program operating 4 or more hours shall ensure that each child is served one meal or one snack at least once every 3 hours.

(c) For each child served a noon or evening meal, that meal shall consist of a protein food, fruit and vegetable, a cereal or bread product and pasteurized grade A vitamin D milk.

(d) Snacks shall consist of at least one of the following: milk or a milk product, fruit, fruit juice, vegetable, peanut butter or

other protein, whole grain or enriched bread or cereal. When only fruit juice is served, it shall be pure fruit juice.

**(12) TRANSPORTATION.** (a) The program shall have a written agreement with each child's parent or guardian, and signed by the parent or guardian, which specifies how the child will be transported to and from the program.

(b) A driver for the program shall hold a valid Wisconsin operator's license required under s. 343.05, Stats.

(c) Any vehicle used by the program to transport children shall be registered in Wisconsin.

(d) Any vehicle used by the program to transport children shall be in safe operating condition and at 12-month intervals the school-age day care program shall provide evidence of the vehicle's safe operating condition to the licensing office of the department of health and family services' regional office.

(e) Each child and adult being transported in a vehicle with a

seating capacity of 15 or fewer shall be seated and properly restrained in an individual vehicle seat belt or a car safety seat.

**(13) PARENTS.** The program shall allow parents to visit and observe the program at any time during the hours of operation.

**(14) INSURANCE.** The program shall provide documentation of insurance coverage by submitting to the county or tribal agency a certificate of insurance reflecting current dates of coverage for:

(a) General liability insurance which provides coverage with limits of not less than \$25,000 for each person and total limits of \$75,000 for each occurrence.

(b) Vehicle liability insurance when transportation is provided, with minimums no less than those specified in s. 121.53, Stats.

(c) Non-owned vehicle liability insurance when transportation is provided by other than center-owned vehicles.

**History:** Cr. Register, August, 1985, No. 356, eff. 9-1-85; emerg. r. and recr. eff. 7-1-96; r. and recr. Register, February, 1997, No. 494, eff. 3-1-97; renum. from HFS 55.62 and am. (2) (e) 1. and cr. (5) (g) and (6) (f), Register, July, 1999, No. 523, eff. 8-1-99; correction in (4) (c) and (8) made under s. 13.93 (2m) (b) 7., Stats., Register, July, 1999, No. 523.