



COVID-19 and Child Care in Wisconsin

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In response to the recent COVID-19 pandemic and pursuant to certain powers authorized by current law related to public health emergencies and the control of communicable diseases, Governor Tony Evers and the Secretary of the Department of Health Services (DHS) have issued several orders affecting child care providers. This issue brief summarizes those orders affecting child care providers and lists additional resources, including those published by the Governor's office and the Department of Children and Families (DCF), providing information for child care providers and families.

EMERGENCY ORDER #3, SUSPENDING CERTAIN ADMINISTRATIVE RULES

On March 12, 2020, Governor Evers issued [Executive Order #72](#) declaring a public health emergency in response to the COVID-19 pandemic.¹ The Governor has broad powers during a state of emergency, including the power to suspend any administrative rule, if strict compliance with that rule would prevent, hinder, or delay necessary actions to respond to the disaster. [[s. 323.12 \(4\) \(d\), Stats.](#)]

Pursuant to this power, on March 15, 2020, Governor Evers signed [Emergency Order #3](#), which **suspends various administrative rules** promulgated by DCF. The order remains in effect for the duration of the public health emergency or until superseding emergency orders are issued.

With respect to child care providers, the order suspends DCF rules in the following general categories:

- Limitations on hours of care and the number and age of children in care.
- Requirements related to child care subsidies under the Wisconsin Shares program.
- Standards for the supervision and grouping of children.
- Certain building requirements, though a child care provider must remain in compliance with applicable state and local building codes.
- Various requirements and qualifications for staff.
- Certain requirements related to staff and child recordkeeping.

EMERGENCY ORDER #6, RESTRICTING THE SIZE OF CHILD CARE SETTINGS

On March 18, 2020, the DHS Secretary signed [Emergency Order #6](#), pursuant to [s. 252.02 \(3\), Stats.](#), which authorizes DHS to close schools and forbid public gatherings in schools, churches, and other places to control outbreaks and epidemics, regardless of whether a state of emergency has been declared. Emergency Order #6 took effect on March 19, 2020, and remains in effect for the duration of the public health emergency declaration, or until a superseding order is issued.

Under Emergency Order #6, child care settings may not operate with more than **10 staff** or more than **50 children** present at a time. The order permits voluntary closure beyond the order's requirements. Child care settings operating under the order must follow [DCF Guidance Order #2](#), which provides guidance on how to respond to specific COVID-19 scenarios, and are encouraged to prioritize access for essential workers, including first responders and health care providers. Additionally, parents and guardians must practice social distancing of at least six feet from other adults and follow all other DHS public health guidance while picking up and dropping off children at the child care setting.

Child care settings must continue to comply with state law and administrative rules, as modified by Executive Order #3 described above. Any person who willfully violates or obstructs the order may be subject to a criminal penalty of imprisonment up to 30 days, a fine up to \$500, or both. [[s. 252.25, Stats.](#)]

EMERGENCY ORDERS #12 AND #28, SAFER-AT-HOME ORDERS

[Emergency Order #12](#), issued by the DHS Secretary pursuant to [s. 252.02 \(3\)](#) and [\(6\)](#), Stats., and effective from March 25 to April 24, 2020, generally requires individuals to stay at home or in their places of residence, except for expressly permitted purposes; required all nonessential businesses and operations to cease; prohibits all public and private gatherings, except for limited purposes permitted by the order; requires certain facilities to close; and prohibits all nonessential travel. [Emergency Order #28](#) was subsequently issued by the DHS Secretary under similar authority, contains most of the same general requirements, is in effect from April 24 to May 26.

Under Emergency Orders #12 and #28, child care settings² are considered essential businesses. In addition, Emergency Orders #12 and #28 maintain the provisions of Emergency Order #6, described above, but amend that order to require child care settings to **prioritize care for families** based on two tiers:

- **Tier 1:** Employees, contractors, and other support staff working in **health care**.
- **Tier 2:** Employees, contractors, and other staff in **vital areas**, such as: military; long term care; residential care; pharmacies; child care; child welfare; government operations; public safety and critical infrastructure such as sanitation, transportation, utilities, telecommunications; grocery and food services; supply chain operations; and other sectors as determined by the DCF Secretary.

EMERGENCY ORDER #26, SUSPENDING ADDITIONAL ADMINISTRATIVE RULES

On April 13, 2020, pursuant to [s. 323.12 \(4\)](#), Stats., Governor Evers issued [Emergency Order #26](#), which **suspends additional DCF administrative rules** related to child care for the duration of the public health emergency declaration. Emergency Order #26 expressly maintains Emergency Orders #3, 6, 12, and 18³, but states that Emergency Order #26 controls to the extent it conflicts with those orders.

Specifically, Emergency Order #26 suspends rules governing certified child care operators, family child care centers, group child care centers, day camps, and the child care subsidy program. While the nature of rules suspended differs among each type of regulated child care, Emergency Order #26 generally suspends rules relating to supervision ratios, authorized hours of care, overnight care, on-site inspections and monitoring, staff training, food service, and certain documentation and records requirements. With respect to the child care subsidy program, Emergency Order #26 suspends timelines for redetermination eligibility, requirements for authorization of payment, various 10-day parental reporting requirements, and certain provider requirements related to written payment agreements.

ADDITIONAL RESOURCES

For additional information, the Governor's office has published these [Child Care Setting Restriction FAQs](#). Also, DCF has created a webpage titled [COVID-19 Child Care Resources](#), which includes the following guidance orders, as well as any guidance orders issued after the date of this publication:

- [DCF Guidance Order #6](#), *FAQ on Scaling Down Operations*.
- [DCF Guidance Order #7](#), *FAQ on Administrative Rule Suspension*.
- [DCF Guidance Order #16](#), *FAQ for child care providers regarding "Safer at Home"*.
- [DCF Guidance Order #19](#), *Updated guidance on child care centers providing care during COVID-19*.

¹ The public health emergency declared by Governor Evers in Executive Order #72 will expire on May 11, 2020, if the Legislature does not approve an extension.

² Executive Orders #12 and #28 provide that child care settings "include all licensed and certified child care providers who may provide care for any age or ages of children up to 13 years of age, unless specially licensed for children with disabilities up to 19 years of age." Executive Order #6 defines "child care setting" as "all licensed and certified child care providers caring for any age or ages of children up to 18 years of age."

³ [Emergency Order #18](#), signed by Governor Evers and the DCF Secretary on March 30, 2020, suspends DCF administrative rules related to child safety and permanence, as well as Wisconsin Works worker training.