

State of Wisconsin
Department of Children and Families
Child Care Subsidy Copayments and Provider Fees
Clearinghouse Rule 23-016
Chapter DCF 201

The statement of scope for this rule, SS 002-23, was approved by the governor on December 22, 2022, published in Register 805A1, on January 3, 2023, and approved by Secretary Emilie Amundson on January 23, 2023.

The Wisconsin Department of Children and Families proposes an order **to repeal** s. DCF 201.06 (4) (b); **to renumber** s. DCF 201.04 (2) (d); **to renumber and amend** ss. DCF 201.04 (2) (b) and (c) and 201.06 (4) (a) (intro.); **to amend** s. DCF 201.04 (2) (ag) (intro.) and 201.08 (1) (a) and (2) (cm); **to repeal and recreate** s. DCF 201.04 (2) (title); and **to create** ss. DCF 201.02 (18p), 201.038 (1m) and (5) (b) 9., 201.04 (2h), Table DCF 201.04, 201.04 (2r) (title), and 201.08 (2) (am) 5. and 6., relating to child care subsidy copayments and provider fees.

Analysis Prepared by the Department of Children and Families

Statutory authority: Section 227.11 (2) (a), Stats.

Statutes interpreted: Section 49.155 (5) (a) and (6) (a) to (c), Stats.

Related statutes and rules: 45 CFR 98.45

Explanation of Agency Authority

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) (a) to (c), 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), Stats., expressly confers rule-making authority on each agency to promulgate rules interpreting the provisions of any statute enforced or administered by the agency.

Summary of the Rule

Registration Fees

As a condition of approval of Wisconsin's 2022-2024 Child Care Development Fund plan, the state child care subsidy program must come into compliance with the federal requirement that the payment practices of the subsidy program reflect generally-accepted payment practices of child care providers that serve children who do not receive subsidies, including paying for reasonable mandatory registration fees that the provider charges to private-paying parents.

The proposed rule authorizes payment of the lower of a provider's registration fee for a child or the department's maximum fee amount. The department shall set a schedule for maximum registration fee amounts in Table DCF 201.04. Maximum fee amounts shall fully cover mandatory registration fees charged by at least 75 percent of providers who respond to the survey of provider fees in s. DCF 201.06 (2). The department's initial maximum registration amount is \$125.

The department may adjust Table DCF 201.04 to reflect any of the following: the fee amounts in the most recent department survey of provider fees; increased alignment with provider fee practices, including variation in fee amounts based on region of the state, children's ages, or provider regulation type; a change in the funding available for the child care subsidy program; a change in costs due to a change in the consumer price index; a change in economic factors affecting the cost of child care to the state, such as an increase in demand for the child care subsidy program; insufficient funding to meet the needs of all eligible families applying for or receiving a child care subsidy; and the purposes of the child care subsidy program.

The department shall publish adjustments to the maximum registration fee schedule in the Wisconsin administrative register. The department will pay no more than 2 registration fees per child in any 12-month period. Also, the written payment agreement between a provider and a parent must include any fees charged.

Each provider that charges a registration fee will be required to submit the amount of the fee to the department. The proposed rule also includes the current requirement that a licensed child care provider submit the provider's full-time and part-time prices to the child care administrative agency upon request.

Parent Copayments

As a condition of approval of Wisconsin's 2022-2024 Child Care Development Fund plan, Wisconsin must also come into compliance with the federal requirement that the child care subsidy program pay for child care services on a part-time or full-time basis rather than paying for hours of service or smaller increments of time. Due to the change from authorizations for a specific number of hours to full-time and part-time authorizations, the proposed rule on the methodology for determining parent copayment amounts removes "the number of hours authorized" for a child care subsidy.

The proposed rule also removes “the number of children in the assistance group in child care” from the methodology for determining copayment amounts. Under the current rules, a parent’s copayment amount 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 rule, a parent’s copayment amount is based on the size of the assistance group and the assistance group’s gross income.

The proposed rule creates exceptions to the copayment requirement for parents who are enrolled in the Wisconsin Works program under s. 49.147 (2) to (5), 49.1475, 49.148 (1m) (a), or 49.159, Stats., and for assistance groups with a gross income that is at or below 100 percent of the federal poverty level. A parent who transitions from enrollment in the Wisconsin Works program to unsubsidized employment will be assessed the minimum copayment until the parent’s next eligibility redetermination.

In-Home Providers

The proposed rule repeals the rule that specifies that an in-home provider who is providing child care services for 15 or more hours per week is the applicable minimum wage, regardless of the number of children receiving care. Subsidy payments will no longer be determined on an hourly basis, and rates for in-home providers will be determined on a part-time/full-time basis.

Summary of Related Federal Law

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.

Summary of Data and Analytical Methodologies

The proposed rules make changes required for approval of Wisconsin's 2022-2024 Child Care Development Fund Plan.

Comparison to Adjacent States

Illinois: The child care assistance program does not pay for registration fees. Copayment amounts are based on gross monthly income and family size. The copayment amount for families with a parent who is a child care worker and families whose income is below 100 percent of the federal poverty level is \$1 per month. Copayments are not assessed for kinship care relatives, families experiencing homelessness, parenting youth who are in out-of-home care or were discharged from out-of-home care within the previous 12 months, and families in which a parent in the household is on active military duty.

Iowa: Copayment amounts are based on gross monthly income, family size, and the number of children receiving care. Copayments are not assessed for families at or below 100 percent of the federal poverty level; recipients of TANF cash assistance and participants in approved PROMISE JOBS activities; and families receiving assistance without regard to income due to protective needs and families needing child care for foster children.

Michigan: Registration fees, annual fees, and field trip fees are paid. Copayment amounts are based on family size and income level. There are no copayments for families who are receiving TANF cash assistance, children in foster care, homeless or migrant children, or children with open child protective services cases. Copayments are temporarily waived for all children until September 23, 2023.

Minnesota: A maximum of 2 registration fees per child are paid to one or more providers in a 12-month period. Copayment amounts are based on family size and income level.

Effect on Small Businesses

Minimal or no economic impact on small business.

Analysis Used to Determine Effect on Small Businesses

The rule primarily affects parents not child care providers.

Agency Contact

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Text of the Rule

SECTION 1. DCF 201.02 (18p) is created to read:

DCF 201.02 (18p) “Registration fee” means a fee that a child care provider charges to enroll a child or to continue a child’s enrollment on an annual basis.

SECTION 2. DCF 201.038 (1m) and (5) (b) 9. are created to read:

DCF 201.038 (1m) PROVIDER SUBMISSION REQUIREMENTS. (a) A licensed child care provider shall submit the provider’s full-time and part-time prices to the child care administrative agency upon request.

(b) Each provider that charges a registration fee shall submit the amount of the fee to the department.

(5) (b) 9. Any fees that parents are required to pay.

SECTION 3. DCF 201.04 (2) (title) is repealed and recreated to read:

DCF 201.04 (2) (title) MONTHLY SUBSIDY PAYMENTS FOR CHILD CARE SERVICES.

SECTION 4. DCF 201.04 (2) (ag) (intro.) is amended to read:

DCF 201.04 (2) (ag) (intro.) *Decreases in the monthly subsidy amount during the 12-month eligibility period.* During a parent’s 12-month eligibility period, the amount of a ~~child-care~~ monthly subsidy payment may not be decreased, unless any of the following conditions are met:

SECTION 5. DCF 201.04 (2) (b) to (d) are renumbered DCF 201.04 (2r) (a) to (c) and as renumbered DCF 201.04 (2r) (a) and (b) are amended to read:

DCF 201.04 (2r) (a) *Electronic.* The department may issue all payments under subs. (2) and (2h) by electronic funds transfer.

(b) *Expiration.* A ~~parent's~~ subsidy payment issued to a parent under sub. (2) or (2h) shall expire 90 days after the date that the department issues the payment ~~to the parent.~~

SECTION 6. DCF 201.04 (2h) is created to read:

DCF 201.04 (2h) PAYMENT OF REGISTRATION FEES. (a) The department shall pay the lower of a provider's registration fee for a child or the department's maximum registration fee amount.

(b) The department shall set a schedule for maximum registration fee amounts in Table DCF 201.04. Maximum fee amounts shall fully cover mandatory registration fees charged by at least 75 percent of providers who respond to the survey conducted under s. DCF 201.06 (2).

(c) The department may adjust Table DCF 201.04 to reflect any of the following factors:

1. Provider fee amounts in the most recent survey under s. DCF 201.06 (2).
2. Increased alignment with provider fee practices indicated in the survey under s. DCF 201.06 (2), including variation in fee amounts based on region of the state, children's ages, or provider regulation type.
3. A change in the funding available for the child care subsidy program.
4. A change in costs due to a change in the consumer price index.
5. A change in economic factors affecting the cost of child care to the state, such as an increase in demand for the child care subsidy program.
6. Insufficient funding to meet the needs of all eligible families applying for or receiving a child care subsidy.
7. The purposes of the child care subsidy program.

(d) The department shall publish adjustments to the maximum registration fee schedule in the Wisconsin administrative register.

(e) The department shall pay no more than 2 registration fees per child in any 12-month period.

SECTION 7. Table DCF 201.04 is created to read:

**TABLE DCF 201.04
Maximum Registration Fee Schedule
Effective [LRB inserts effective date of rule]**

The department's maximum registration fee amount is \$125.

SECTION 8. DCF 201.04 (2r) (title) is created to read:

DCF 201.04 (2r) PAYMENT PROCEDURES.

SECTION 9. DCF 201.06 (2) (a) and (b) are amended to read:

DCF 201.06 (2) (a) The department shall annually contact all licensed group child care centers, family child care centers, and day camps to obtain their child care prices and registration fee amounts.

(b) The department shall include only child care prices and registration fee amounts submitted in writing in the survey results.

SECTION 10. DCF 201.06 (4) (a) (intro.) is renumbered DCF 201.06 (4) (intro.) and amended to read:

DCF 201.06 (4) RATES FOR CERTIFIED CHILD CARE PROVIDERS. ~~(a) *Percentage of licensed rates.*~~ The department shall set rates for certified child care providers under s. 49.155 (6) (b) and (c), Stats., as follows:

SECTION 11. DCF 201.06 (4) (b) is repealed.

SECTION 12. DCF 201.08 (1) (a) is amended to read:

DCF 201.08 (1) (a) The department shall set a schedule for parent copayment responsibilities for all parents who receive a child care subsidy, except as provided under sub. (2). Copayment amounts will be based on the size of the assistance group, and 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.~~ The copayment schedule is provided in Table DCF 201.08.

SECTION 13. DCF 201.08 (2) (am) 5. and 6. are created to read:

DCF 201.08 (2) (am) 5. The parent is enrolled in Wisconsin Works under s. 49.147 (2) to (5), 49.1475, 49.148 (1m) (a), or 49.159, Stats.

6. The gross income of the assistance group is at or below 100 percent of the federal poverty level.

SECTION 14. DCF 201.08 (2) (cm) is amended to read:

DCF 201.08 (2) (cm) A parent ~~that leaves a~~ who transitions from Wisconsin works ~~position~~ for under s. 49.147 (2) to (5), 49.1475, 49.148 (1m) (a), or 49.159, Stats., to unsubsidized employment shall be assessed the minimum copayment ~~based on the number of children in the assistance group for whom the parent is receiving a child care subsidy~~ until the parent's next eligibility redetermination.

SECTION 15. EFFECTIVE DATE. This rule takes effect on the first day of the month following publication in the Administrative Register, as provided in s. 227.22 (2) (intro.), Stats., except that SECTIONS 12 to 14 take effect on November 1, 2024.