

## **Public Hearing Summary**

### **Proposed Rules Relating to Child Care Certification Chapter DWD 55 CR 07-071**

**A public hearing was held in Madison on August 15, 2007. The following commented on the proposed rules:**

1. Dave Edie, Early Education Policy Analyst  
Wisconsin Council on Children and Families  
Madison
2. Jane Robinson, Assistant Director  
The Registry/ Harmony House  
Madison
3. Nicole Peltier, Certification Manager  
4-C Community Coordinated Child Care, Inc.  
Madison
4. Oma Vic McMurray, provider and AFSCME representative  
Madison
5. Carolyn Klinglesmith, Organizing Director  
AFSCME  
Madison
6. Silke O'Donnell, provider and AFSCME representative  
Madison
7. Debra Block, provider

**The following registered against the proposed rules:**

8. Susanne Hoesler, AFSCME  
Madison
9. Jan Fairchild, AFSCME organizer  
Madison

**The following observed for information only:**

10. Pat Knabe, Certification Specialist  
4-C Community Coordinated Child Care, Inc.  
Madison
11. Brianne Heidke, Certification Assistant Manager  
4-C Community Coordinated Child Care, Inc.  
Madison
12. Kim Gonzalez, Administrative Assistant  
4-C Community Coordinated Child Care, Inc.  
Madison
13. Michael Strauss  
Sharlene's Child Care  
West Allis

## Comment Summary and Department Response

### DWD 55.04 Certification Process

#### Approval of Application for Certification, DWD 55.04 (3) (e)

Klinglesmith: The proposed rule provides that the certification agency shall issue a child care certification within 60 days after determining that the applicant is fit and qualified and the applicable standards in s. DWD 55.08 or 55.09 are in compliance. We suggest the time period be shortened to “within 30 days.”

Department response: The rule has been modified to state that “Within 60 days after receiving a completed application for certification or recertification and satisfactory investigation and determination that the applicant is fit, the county or tribal agency shall either approve the application and issue a certificate or deny the application.” The inspection of the premises and verification that other standards in ss. DWD 55.08 and 55.09 are met will be done within the 60-day period.

#### Inspection of Premises, DWD 55.04 (7) (b) 2. d.

Peltier: As a certifier in Dane County, I support the change that requires a county or tribal agency to conduct an inspection of the tract of land on which the home used for child care is located and all buildings and structures on that land, including areas that will not be used for child care. There have been numerous times over the years we have found the following violations in nonchild care areas of provider’s homes: Unreported residents, dead rodents, standing water, hidden unreported day care children, guns without trigger locks, ammunition stored near guns, animal feces, and medication in children’s reach with locks not in use, and inappropriate emergency shelters.

Department response: Department agrees.

Klinglesmith: Inspecting areas that will not be used for child care imposes an unnecessary burden on inspectors and is unduly invasive of the privacy of child care operators and their families.

Department response: Inspecting the entire premises is necessary for the health and safety for the children in care, as specified in Nicole Peltier’s comment. This change is proposed in part in response to the death of a small child in the care of a provider in LaCrosse who kept an unreported child hidden in a playpen in the basement with a gate covering the playpen, causing the child to strangle between

the gate and the rail of the playpen. The inspector had been at the premises the week before and did not inspect the basement because the provider had said that area was not used for child care.

*Limit Certification to One Operator for Each Family Residence, DWD 55.04 (7) (b) 2. g.*

Peltier: Limiting certification to one operator for each family residence is helpful because operators often think they can have up to 12 children in care if they have 2 providers, misunderstanding the limits in the current rule.

Department response: Department agrees. In addition, this limit is necessary to ensure accurate monitoring of group size through the automation system and has been Departmental policy since 2002.

McMurray: Operators may need a second provider to care for children to give them time to get a second job, which may be financially necessary. A team of providers would also enhance accountability.

Department response: A child care operator may hire an assistant that is approved by the county or tribal agency under s. DWD 55.08 (1) (d). Only one certificate of approval for a child care operator may be granted per site. The Department of Health and Family Services has a similar that applies to licensed family providers.

*Medical Evaluation of Persons Who May Endanger Children in Care, DWD 55.04 (7) (b) 3. e.*

Peltier: With proper documentation of concerning behaviors (overreactive anger towards staff, parents, food program staff, police officers), seemingly oblivious and unresponsive to children's needs, erratic behavior, we feel it is imperative to have an evaluation conducted prior to it becoming a danger to children. County and tribal agency staff are not trained mental health professionals.

Department response: Department agrees.

Klinglesmith: We are concerned about certifier subjectivity. The Department has assured us that certifiers will be trained to use this rule only if they have documentation of concerning behavior. We suggest an additional sentence: "The county or tribal agency shall document what reason it has to believe that the person's physical or mental health may endanger children in care."

Department response: Department agrees.

## **Sanctions, DWD 55.065**

Klinglesmith: The proposed rule provides that if a family child care operator violates the provisions of DWD 55, s. 48.685, or ch. HFS 12, the county or tribal agency may suspend the operator's certification for not more than 60 days. The agency shall either reinstate or revoke the certification by the date that the suspension expires. In order to encourage certifying agencies to act as quickly as possible, we suggest this be rewritten as follows: "Suspend the operator's certification for not more than 30 days. The agency shall either reinstate or revoke the certification by the date that the suspension expires, or may continue the suspension for not more than 30 additional days, and then shall either reinstate or revoke the certification by the date that the suspension expires."

Department response: The Department does not think it is appropriate to impose the extra work on certification workers to extend the suspension at 30 days when the 60-day period is often needed. Sixty days is generally needed when there is a child abuse investigation or pending charges of serious crimes or crimes that may substantially relate to the care of children. In many other situations, the provider causes the delay by not correcting violations in a timely manner.

## **Qualifications of Providers, DWD 55.08 (1)**

### *Training on Shaken Baby Syndrome, DWD 55.08 (1) (b) 1.*

McMurray: My program has been successful, in part, because I bring in people who share their expertise, such as a drummer, yoga teacher, and artist. I also bring in volunteers to help with field trips. Requiring all employees and volunteers to take training on shaken baby syndrome hampers my ability to bring in other resources. If the training requirement were only applied to staff that meet ratios, it would not affect my business as much.

O'Donnell: Anne Carmody, who works in the Department of Health and Family Services Bureau of Regulation and Licensing, informed the Madison Area Association of Accredited Programs that the requirement of training on shaken baby syndrome will only apply to volunteers who are used in ratios of providers to children. This should be in the rules.

Department response: There have been discussions with Senator Lassa, the sponsor of the shaken baby bill, on how to interpret the requirement of training for volunteers. An agreement was reached after these rules were noticed for hearing that the shaken baby training requirement will apply to employees and volunteers who are left in charge of children. The Department has added the phrase "except for a volunteer who does no sole supervision of a child" to the shaken baby training requirement. All employees will be required to take the shaken baby training since they are likely to be left alone with children.

Training on Early Childhood Development, DWD 55.08 (1) (b) 2. a.

Eddie: The Wisconsin Council on Children and Families supports the proposal for a family child care operator to complete at least 2 credits of early childhood training or non-credit department approved training prior to Level I certification, commonly referred to as regular certification. We believe that understanding of child development and health and safety is essential in any child care setting, and this rule represents a needed increase in the certification training requirement.

Our agency is part of the Wisconsin Early Learning Coalition, which advocated raising educational requirements for certified child care providers to the same level required by licensed family child care providers in the 2007-09 budget. The Coalition and WCCF continue to support such a policy. This rule change is a major step in that direction, although Level II provisionally certified family child care providers still have to meet no early childhood development training requirements. Family child care certification was established to assure that children from low-income families receiving financial assistance were served in safe, healthy, nurturing child care settings. We believe that these children have a high risk of not being ready for school, and it is imperative that the family child care providers serving them are trained in basic child development.

Department response: The Department agrees that the Level I providers' increased understanding of child development and health and safety issues will be beneficial to children in care. A training requirement for Level II provisionally certified providers, beyond training on shaken baby syndrome and sudden infant death syndrome, will require a statutory change.

Block: I don't have time to take classes. I work long hours caring for a widower's children, work part-time at Wal-Mart, and have a special needs child of my own.

Department response: The requirement for 2 credits of early childhood training or non-credit department-approved training applies to new applicants for certification. It does not affect providers who are already certified. The training on shaken baby syndrome is a statutory requirement for all regulated child care providers and is necessary to ensure the health and safety of children in care who are under 5 years old.

The Registry (not included)

Robinson: Previous drafts of the rule required documentation of professional training and education through *The Registry*. I was very disappointed to see it was not in the current draft. A *Registry* certificate is verified training, education and experience reflected on a professional certificate. Licensed child care providers are required to document their professional qualifications through *The Registry*, and this is valuable information to state regulatory agencies and parents searching for child care. The cost of the initial certificate is \$42. *The Registry* and DWD could review these fees if cost is an issue. Participation in *The Registry* provides information that will be necessary for implementation of a quality rating system. Nearly every state in the nation is piloting or implementing a quality rating system. Early childhood practitioners need to demonstrate professional development and adhere to standards to be considered a profession.

Department response: The Department agrees that there are advantages to requiring that professional training be documented with *The Registry*, but we will not be implementing the requirement at this time. The Department will continue to research and discuss this issue for possible implementation in the future.

*Consistent Continuing Education Training Statewide, DWD 55.08 (1) (b) 2. b. (not included)*

Robinson: I was disappointed to see that a proposal to require consistent continuing education training statewide was not included in this draft. The current rule *allows* a county or tribal agency to require up to 5 hours of annual continuing education by a Level I (regular) certified child care operator. The proposal that was deleted would have *required* all Level I (regular) certified child care operators to complete the 5 hours of continuing education in early childhood core knowledge areas approved by the Department. The inconsistency from county to county may confuse parents who may be searching for child care in multiple counties if they work in one county and live in another. These early years of child development are of critical importance and we need to move Wisconsin child care to higher levels of professionalism and quality.

Department response: The Department agrees that a consistent continuing education requirement throughout the state has advantages but we will not be implementing the requirement at this time. The Department will continue to research and discuss this issue for possible implementation in the future.

*Training for Substitutes, DWD 55.08 (1) (b) 2. d.*

McMurray: The proposed rule requires a substitute who has worked more than 240 hours for a certified child care operator with a Level I (regular) certification to comply with the same training requirements as the child care operator, including the 2 credits of early childhood training or non-credit department-approved training. Getting substitutes is difficult. The

full training in early childhood development seems excessive. Training for substitutes should just include first aid, CPR, and shaken baby syndrome. I suggest limiting the requirement of early childhood development training to substitutes to those who have worked more than 240 hours per year.

Department response: When parents enroll their children with a Level I certified child care operator, they are under the impression that the provider has taken the basic early childhood development training required to obtain certification. If a child care operator regularly uses a substitute who does not have any early childhood training, the children are not receiving the same standard of care that they would if the certified operator were in charge. The rule is intended to ensure that the quality of care is constant. The Department of Health and Family Services has a similar rule that applies to licensed family providers.

*Reporting Changes That Affect Eligibility, DWD 55.08 (1) (c)*

McMurray: The proposed rule requires that a certified child care operator report as soon as possible, but not later than the operator's next working day, changes that affect eligibility, including, among other things, any construction or remodeling of the premises that might have an effect on health and safety of children in care. I suggest that the standard be limited to any construction that might have an effect on health and safety of children who are present during the construction or that the premises would not meet the required health and safety standards until the construction is complete.

Department response: The proposed rule will ensure that the county or tribal agency is aware of construction so the certification worker may visit the site to ensure that the home is free of hazards that are common while doing home repair.

*Approval of New Substitutes, Employees, and Volunteers, DWD 55.08 (1) (d)*

McMurray: The proposed rule requires that a substitute, employee, or volunteer for a Level I or Level II provider be approved by the certifying agency before employment or volunteer work commences. The Department should not hinder our ability to get much needed help. It could be required to have a background check done because that typically takes just a few days to be returned.

Klinglesmith: What does "approved" mean? If it means the certifying agency must receive and process all required background check information and training documentation, and advise the certified child care operator in a timely manner if there is a problem, the rule should be rewritten to reflect that. Certifying agencies do not have statutory authority for hiring approval based on unspecified criteria.

Department response: The Department added the following language to s. DWD 55.08(1)(d): “The county or tribal agency shall approve the substitute, employee, or volunteer if the agency has verification that the substitute, employee, or volunteer has met the standards under s. DWD 55.05, regarding the criminal history and child abuse record search, and completed the training on sudden infant death syndrome and shaken baby syndrome and impacted babies required under par. (b) 1.”

### **Supervision, DWD 55.08 (5)**

#### *Supervision of Children for 16 Hours, DWD 55.08 (5) (c) (not changed)*

Peltier: I was disappointed to see that an earlier proposal to limit the hours a certified provider may supervise children to 12 hours in a 24-hour period and to prohibit a provider from being both licensed and certified was eliminated from this draft of the rule. The current certification rules allow a provider to care for up to 6 children for 16 hours. Licensed providers may care for up to 8 children for 12 hours. Dual regulation allows a provider to care for 8 children for 12 hours as a licensed provider and then to care for up to 6 children for an additional 4 hours as a certified provider. Allowing providers to care for other people’s children for 16 hours is simply too much for one person to reasonably conduct and yet take care of themselves, their own family, proper maintenance of their home, and records for their child care business. Providers who are subject to both the licensing rules and the certification rules have additional paperwork, hardship, and confusion.

Department response: The Department agrees that caring for other people’s children for 16 hours while balancing other responsibilities is challenging. Representatives of providers have raised the issue that a decrease in hours that providers are allowed to care for children is a decrease in their earning capacity. The Department will not be implementing the decrease in hours at this time but may revisit it in the future.

### **Provider and Parent Communication, DWD 55.08 (12)**

#### *Same Rates for Publicly Funded Parents and Private Pay Parents, DWD 55.08 (12) (c)*

Klinglesmith: The proposed rule provides that the child care operator shall charge the same rates for publicly funded parents and private pay parents. This sentence may be interpreted to prevent providers from charging more than the maximum reimbursement rate. This sentence may also restrict use of sliding fee scale rates or variable rates based on when a child was enrolled or the number of children in a family. We suggest that the sentence be rewritten as “The child care operator shall apply his or her rate structure equally to publicly funded parents and private pay parents.”

Department response: This provision has been withdrawn.

**Discrimination Prohibited, DWD 55.08 (13)**

*Discrimination Prohibited Based on Socioeconomic Background, DWD 55.08 (13)*

KlingleSmith: Prohibiting discrimination based on socioeconomic background may be interpreted to prohibit child care operators from choosing to provide care for a publicly funded child over a private pay child or from choosing to provide care for a private pay child over a publicly funded child. The National Association for the Education of Young Children’s position on ethnic and socioeconomic integration is that programs should be designed to include child from a variety of ethnic and socioeconomic backgrounds; a socioeconomic mix should be facilitated through sliding fee scales and use of multiple funding sources; and policies that intentionally or unintentionally result in segregation on the basis of ethnicity, socioeconomic status, or special need, including “at risk” status, must be rectified.

McMurray: Providers have to limit the number of publicly funded children that they enroll due to funding cuts.

Department response: This provision has been withdrawn.