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# Wisconsin Legislative Council

## ACT MEMO

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### 2021 Wisconsin Act 35 [2021 Senate Bill 105]

### Eliminating Family Support and Restructuring Administrative Rules on Child Support

2021 Wisconsin Act 35 repeals the court's authority to order family support and directly modifies the administrative code chapter governing child support to reorganize its provisions.

## REPEAL OF FAMILY SUPPORT

Prior Wisconsin law authorized courts to order family support, which combined the component parts of child support and maintenance in a single obligation, in lieu of separate child support and maintenance payments. Under prior federal law, the entire family support payment was treated as tax deductible, and therefore the payments were deductible by the payor-spouse and taxable income of the recipient-spouse. Under a federal law change, maintenance payments are no longer deductible by the payor-spouse and are not treated as taxable income to the recipient spouse for divorce or separation instruments executed after December 31, 2018. State tax law was changed to be consistent with federal tax law for taxable years beginning after December 31, 2017.

Act 35 repeals a court's authority to order family support and provides that no new family support orders may be issued beginning on the act's effective date. However, family support orders issued before the act's effective date remain in effect and are subject to all provisions in prior law that applied to family support orders, including provisions relating to calculating interest and the duties of the Department of Children and Families (DCF) regarding application of payments received.

## CHANGES TO ADMINISTRATIVE RULES GOVERNING CHILD SUPPORT

Under prior administrative rules promulgated by DCF, the child support formula that applied in a shared physical placement arrangement was included among the formula for "special circumstances."

Act 35 moves the formula that applies in a shared physical placement arrangement to a new section of DCF's rules before all of the child support formula variations. The act also specifies that, under DCF rules, the designated percentage that applies in a nonshared physical placement arrangement applies only if the conditions for the shared placement formula do not apply. The act does not change the manner of calculating the amount of child support or the applicable formulas.

The act creates a new defined term under DCF's rules for a "designated percentage," to mean the applicable percentage of a parent's monthly income, or adjusted monthly income, that is available for child support. The "designated percentage" phrase is then used within the calculations for a shared placement arrangement and circumstances of a serial-family parent, split-placement parents, and combinations of special circumstances.

In addition, with respect to the DCF rules governing child support, the act does all of the following:

- Retitles the applicable DCF administrative code chapter from “Child Support Percentage of Income Standard” to “Child Support Standard.”
- Removes the definition of the term “standard” or “percentage standard” from DCF’s rules.
- Moves a Note appended to the definition of “standard” in DCF’s rules to the new definition of the “designated percentage.”
- Moves the listing of the designated percentage amounts, and the standard that applies to a request for a deviation from the percentage standard, to be placed with and follow the shared physical placement arrangement formula.
- Updates cross-references within DCF’s rules to reflect the reorganization of the shared physical placement and designated percentage provisions.

**Effective date:** The act generally took effect on May 23, 2021, except for the treatment of the administrative rules, which takes effect on December 1, 2021.

AO:mca;jal