



## Clearinghouse Rule 18-088

### State of Wisconsin Department of Children and Families

### Child Care Subsidy Program Chapters DCF 102 and 201

The Wisconsin Department of Children and Families proposes to **repeal** ss. DCF 102.02 (11) (Note) and (12) (Note), 102.10 (4), 201.02 (10) and (Note), (15) (Note), (17) (Note), and (18), 201.036 (3), (4) (Note), 201.039 (7) (a) 6. (intro.) and b., and 201.04 (2g); to **renumber and amend** s. DCF 201.039 (4) and (7) (a) 6. a. and 201.08 (1); to **amend** ss. DCF 102.01, 102.02 (11) and (12), 102.10 (4), 201.03 (title), 201.034 (2) (c), 201.036 (2), (4) (title), (4), 201.038 (8) (title), 201.039 (2) (c), (5) (a), (7) (title), (10) (a), (11) (a) (title), 1. (intro.), 2. (intro.) and a., and (b), (13) (a) (intro.), 1. a., b., c., and 2. (intro.), 201.08 (3) (a) 2., 4., 5., and 6.; to **repeal and recreate** ss. DCF 102.10 (title), 201.02 (17), 201.039 (1), (4) (title), and (7) (a) 5., and 201.08 (2) and (Note); and to **create** ss. DCF 102.10 (5), 201.02 (1d), (1g), (1r), (7m) and (Note), (9g), (9r), (11), (15g), (16m), (17g) and (Note), (17s), (21), and (21m), 201.036 (2e), (2m), (2s), and (5), 201.037, 201.039 (2g), (2r), (4) (b), (10m), 201.04 (2) (ag) and (ar), 201.08 (1) (b), (3) (a) 7., and (4), relating to the child care subsidy program.

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#### **Analysis Prepared by the Department of Children and Families**

**Statutory authority:** Sections 49.155 (1) (bm), (1m) (d), (2m), and (5), and 227.11 (2) (a), Stats.

**Statutes interpreted:** Sections 49.145 (2) (f) and 49.155, Stats., and 45 CFR Part 98

**Related statutes and rules:** DCF 202, 250, 251, and 252

#### **Explanation of Agency Authority**

The department administers the child care subsidy program under s. 49.155, Stats.

Section 49.155 (1) (bm), Stats., as created by 2017 Wisconsin Act 59, provides that “liquid assets” does not include any financial resources designated by the department by rule as excluded for the purpose of the limit on the total liquid assets of a family under s. 49.155 (1m) (cm), Stats.

Section 49.155 (1m) (d), Stats., provides that an individual may receive a subsidy if the individual satisfies other eligibility criteria established by the department by rule.

Section 49.155 (2m), Stats., as created by 2017 Wisconsin Act 269, provides that the department may promulgate a rule that establishes a hardship exemption to the limits on the value of a family's home and vehicles under s. 49.155 (1m) (cr), Stats..

Section 49.155 (5), 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 (6g) (a) 5., Stats., provides that the department shall take into consideration child learning and development and shall promote continuity of care when authorizing hours of child care. The department is not required to limit authorized hours based on the individual's schedule of activities or the number of hours the individual spends in those activities.

States are required to comply with 45 CFR Part 98 as a condition of receiving Child Care Development Funds.

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 if the agency considers it necessary to effectuate the purpose of the statute.

### **Summary of the Rule**

The rules make changes related to new federal regulations for the Child Care Development Fund (CCDF) under 45 CFR Part 98. CCDF is a major funding source for the child care subsidy program. The primary focus of the applicable CCDF regulations is supporting continuity of care for children and financial stability for families.

### **In general, 12-month eligibility and authorization**

In general, a child care administrative agency determines the number of hours that a parent needs child care at or following the parent's eligibility determination and 12 months later at or following the parent's eligibility redetermination. Based on the assessment, the agency issues an authorization to the parent that approves payment under the subsidy program for a specific child, a specific child care provider, and a specific number of hours for the following 12 months.

### **Authorizations for less than 12 months for certain expected changes**

A child care administrative agency may issue an authorization that ends on the date that a parent's employability plan will expire if the parent is participating in the Wisconsin Works program, the date that a parent's employment plan will expire if the parent is participating in the Food Stamp Employment and Training program, or the end of a parent's school term.

### **When an authorization based on a new assessment is required during the 12-month eligibility period**

During a parent's 12-month eligibility period, a child care administrative agency is required to conduct a new assessment of the parent's need for child care and issue a new authorization based on the assessment at all of the following times:

- The beginning of a school year for a school-age child.

- The end of a parent’s 24-month education time limit.
- When a second parent or a teen parent of the child moves into the household.
- When the parent requests an authorization for subsidized child care more than one calendar month after the parent’s previous authorization ended.
- When the parent changes child care providers.

Other changes and continuity of care

The rules require that a parent report various changes that may affect the parent’s eligibility or need for child care. A child care administrative agency may assess the number of hours that a parent needs child care following a parent’s report of a change that may affect the number of hours that the parent needs child care but is not on the list of times when a new assessment and authorization are required. A child care administrative agency may also assess the number of hours that a parent needs child care following the end of an authorization written for less than 12 months.

If the agency determines that the parent needs fewer hours of child care than the number of hours in the parent’s most recent authorization, the agency shall allow the parent to continue with the most recent authorization or issue a new authorization for up to the same number of hours.

If a parent is taking a temporary break of less than 3 months while remaining employed or enrolled in an approved activity or a parent is no longer participating in any approved activity and is beginning the 3-month eligibility period following the permanent loss of an approved activity under s. 49.155 (1m) (a) (intro.), Stats., the agency shall allow the parent to continue under the most recent authorization or offer the parent an authorization for up to the same number of hours as the parent’s previous authorization without an assessment of the parent’s need for child care.

Copayment amounts

During a parent’s 12-month eligibility period, the copayment amount may only be increased for the following reasons:

- The increased copayment amount corresponds to an increase in the number of hours authorized for a child care subsidy to the parent.
- The income of the assistance group was at or above 190 percent of the federal poverty level but under 200 percent at the parent’s last eligibility redetermination; the increased copayment amount corresponds to an increase in the federal poverty level of the assistance group; and the copayment amount does not exceed the amount that is assessed for an assistance group at 200 percent of the federal poverty level.
- The income of the assistance group was at or above 200 percent of the federal poverty level at the parent’s last eligibility redetermination and the parent’s copayment is increasing by \$1 for every \$3 increase in income over 200 percent of the federal poverty level, as provided under s. 49.155 (1m) (c) 1d., Stats.

Under the current rules, a parent’s copayment amount is based on the size of the group, gross income, and the number of children in child care. If a child attends child care 20 hours or fewer per week, the copayment is 50 percent of the full-time amount.

The proposed rules add “the number of hours authorized for a child care subsidy” as a factor to be used in determining the copayment amount, along with group size, gross income, and the number of children in child care. The proposed rules allow repeal the 50 percent reduction for 20 or fewer

hours per week. These changes will allow for a gradual increase in a parent's copayment as the parent's authorized hours increase rather than a disproportionate increase in the copayment amount when the parent's hours increase from 20 or fewer to 21 hours per week.

If a parent no longer meets the conditions of eligibility for a copayment exception during the 12-month eligibility period, the parent may continue to qualify for the exception until the parent's next eligibility redetermination.

#### Asset limits

Section 49.155 (1m) (cm), Stats., as created by 2017 Wisconsin Act 59, provides that an assistance group may not have liquid assets that exceed \$25,000 and directs the department to promulgate a rule to specify financial resources to be excluded. The rules provide that financial resources that are not cash on hand or funds in checking, savings, money market, or credit union share accounts that can be withdrawn without incurring penalties are excluded from the liquid asset limit.

Section 49.155 (1m) (cr), Stats., as created by 2017 Wisconsin Act 269, prohibits a family from owning vehicles with a combined equity of more than \$20,000 or a home valued at more than 200 percent of the state median value for homes. Section 49.155 (2m), Stats., allows the department to promulgate rules creating hardship exemptions. The department's rules provide exemptions for a child's foster parent, kinship care relative providing care under a court order, and subsidized guardian or interim caretaker. The rules also create an exemption if ownership of an applicable asset is unclear due to a recent death or change in the composition of the assistance group or if the assistance group is homeless.

#### Other changes

- Child care statutory authority, definitions, and hearing procedures are added in ch. DCF 102, Child Support Cooperation for Wisconsin Works.
- Exceptions to the address verification requirements are created for homeless families and for persons registered under the address confidentiality program under s. 165.68, Stats.,
- Physician assistants and nurse practitioners are added to the list of health care professionals that may provide documentation that a second parent has a disability or health condition that makes the parent unable to participate in an approved activity and unable to provide child care while the other parent is participating in an approved activity.
- If the governor declares an emergency under s. 323.10, Stats., an authorization for child care for a provider at a location within the area covered by the declaration of emergency may be used at another provider.
- The provisions on backdating an authorization also apply at a parent's redetermination.

#### Summary of Factual Data and Analytical Methodologies

The rules include changes related to federal regulations implementing the Child Care Development Block Grant Act of 2014 and rules required under 2017 Wisconsin Acts 59 and 269.

## **Summary of Related Federal Law**

### **45 CFR 98.20 Eligibility for Child Care Assistance**

(a) For a family to be eligible for child care assistance, the following requirements must be met at the time of eligibility determination or redetermination:

- The child shall be under 13 years of age or, at a State's option, under age 19 and physically or mentally incapable of caring for himself or herself.
- The family's income may not exceed 85 percent of the State's median income (SMI) for a family of the same size.
- The family's assets may not exceed \$1,000,000 (as certified by a family member).
- The child's parents shall be working or attending a job training or educational program; or the child shall be receiving, or need to receive, protective services, which may include specific populations of vulnerable children as identified by the State.
  - A State may waive income and asset requirements for the family of a child who is receiving, or needs to receive, protective services, on a case-by-case basis or, if defined in the State plan, for all children in foster care.

(b) A State may establish additional eligibility conditions, but these conditions may not impact eligibility at any time other than eligibility determination or redetermination.

### **45 CFR 98.21 Eligibility Determination Processes**

(a) A State shall redetermine a family's eligibility for child care assistance no sooner than 12 months following the initial determination or most recent redetermination, subject to the following:

- During the period of time between determinations or redeterminations of eligibility, the family shall be considered eligible and shall receive services at least at the same level, regardless of the following:
  - A change in family income as long as the family's income does not exceed 85% of the SMI for a family of the same size.
  - A temporary change or cessation of work or attendance at a training program that does not exceed 3 months.
- A State may discontinue assistance due to a parent's loss of work or cessation of attendance at a job training or educational program that is not a temporary change, but assistance must be continued at least at the same level after each such loss or cessation until the earlier of the following:
  - 3 months after the parent's loss of work or cessation of attendance at the job training or educational program.
  - The parent's next annual redetermination of eligibility.
- Notwithstanding the 12-month eligibility period, a State may discontinue assistance prior to a family's next redetermination in the following limited circumstances:
  - Excessive unexplained absences despite multiple attempts by the State to contact the family and provider, including prior notification of possible discontinuation of assistance. If the State chooses this option, it shall define the number of unexplained absences that shall be considered excessive.
  - A change in residency outside of the State.
  - Substantiated fraud or intentional program violations that invalidate prior determinations of eligibility.

- A State cannot increase family copayment amounts within the minimum 12-month eligibility period, except during the graduated phase-out under (b).

(b) A State may establish initial income eligibility for a family at a level less than the CCDF level of 85 percent of the SMI for a family of the same size but must provide a graduated phase-out by implementing two-tiered eligibility thresholds, with the second tier used at the time of eligibility redetermination.

- The second tier may be set at 85 percent of the SMI or an amount that is lower than 85 percent of the SMI and higher than the State's initial eligibility level.
- To help families transition off of child care assistance, a State may gradually adjust copay amounts for families under graduated phase-out conditions. During the graduated phase-out, the State may require additional reporting on changes in family income, provided the requirements do not constitute an undue burden.

(c) A State shall establish processes for initial determination and redetermination of eligibility that take into account irregular fluctuation in earnings and ensure that temporary increases do not affect family eligibility or copayments, including temporary increases that result in family income exceeding 85 percent of the SMI.

(e) A State shall require families to report a change at any point during the minimum 12-month period, limited to the following:

- If the family's income exceeds 85 percent of the SMI, taking into account irregular income fluctuations.
- At the option of the State, the family has experienced a non-temporary cessation of work, training, or education.
- A State may impose additional requirements on parents to report a change in circumstances as long as the requirements do not constitute an undue burden on families. Any additional reporting requirements shall be limited to items that impact a family's CCDF eligibility or those that enable the State to contact the family or pay providers.
  - During a period of graduated phase-out, a State may require additional reporting on changes in family income for the gradual adjustment of family copayments, if desired.
- A State must allow families the option to voluntarily report changes on an ongoing basis.
  - The State is required to act on information provided by the family that will reduce the family's copayment or increase the family's subsidy.
  - The State is prohibited from acting on information that would reduce the family's subsidy, unless the information provided indicates any of the following:
    - The family's income exceeds 85 percent of the SMI, taking into account irregular income fluctuations.
    - At the option of the State, the family has experienced a non-temporary change in the work, training, or educational status.

#### 45 CFR 98.45 (k) Equal Access and Copayments

- A State shall establish, and periodically revise, by rule, a sliding fee scale for families that

receive CCDF child care services that meets all of the following conditions:

- Helps families afford child care and enables choice of a range of child care options.
- 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.
- Provides for affordable family copayments that are not a barrier to families receiving assistance under this part.
- A State may waive copayments for any of the following:
  - Families whose incomes are at or below the poverty level for a family of the same size.
  - Families that have children who receive or need to receive protective services.
  - Families that meet other criteria established by the State.

### **Comparison to Adjacent States**

#### **Minnesota**

Minnesota enforces child support cooperation at a parent's eligibility determination and redetermination. Termination due to fraud or intentional program violation may only occur if an administrative hearing or court finds that the parent wrongfully obtained or attempted to obtain assistance or if the parent enters into a consent agreement.

#### **Michigan**

Michigan has a 12-month eligibility period regardless of a change in the family's need for child care. Copayments are lower if the child care provider has a higher quality of care rating. Michigan does not discontinue assistance for excessive unexplained absences. Termination for fraud or intentional program violation may only occur if an administrative hearing or court finds that the parent wrongfully obtained or attempted to obtain assistance or if the parent enters into a consent agreement.

#### **Iowa**

Iowa establishes eligibility periods of up to 18-months in the following situations:

- A family needs a child care subsidy to attend post-secondary education, and they will exhaust the 24-month limit on assistance for participation in post-secondary education within 6 months from the end of a 12-month certification period.
- A family includes a child who will turn 13 years old within 6 months from the end of a 12-month certification period.

Iowa does not terminate assistance for excessive unexplained absences and does not disqualify parents for intentional program violations.

#### **Illinois**

General statutory authority for a 12-month eligibility period was enacted on 8/17/18, and implementation details were not found on the agency website. Illinois does not disqualify parents for intentional program violations.

### **Effect on Small Businesses**

The rule will affect small businesses, including child care providers that are small businesses as defined in s. 227.114 (1), Stats. The effect will be minimal.

### **Analysis Used to Determine Effect on Small Businesses**

The rules will have a positive effect on child care providers. Providers will receive a more stable income from families who receive a child care subsidy. There will be less fluctuation from month to month in the amount of the subsidy, and parents will have longer authorizations approving payment for a specific number of hours.

### **Agency Contact**

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### **Public Comment**

The department will hold a public hearing on January 7, 2019, at 1:30 p.m., in the GEF 1 Building, 201 E. Washington, Room D203, Madison. Written comments may be submitted no later than January 8, 2019, to [dcfpublichearing@wisconsin.gov](mailto:dcfpublichearing@wisconsin.gov) or Elaine Pridgen, Office of the Secretary, Department of Children and Families, 201 E. Washington Avenue, P.O. Box 8916, Madison, WI, 53708-8916.



**SECTION 1. DCF 102.01 is amended to read:**

**DCF 102.01 Authority and purpose.** This chapter is adopted pursuant to ~~s.~~ ss. 49.145 (2) (f) and 49.155 (1m) (b) 1., Stats., for the purpose of administering the requirement that each parent in a Wisconsin works group cooperate with efforts directed at establishing paternity and obtaining support payments or any other payments or property to which that parent and any minor child of that parent may have rights or for which that parent may be responsible, unless the parent has good cause for failing to cooperate.

**SECTION 2. DCF 102.02 (11) is amended to read:**

**DCF 102.02 (11)** “Wisconsin works agency” or “W-2 agency” has the meaning given in s. DCF 101.03 (38) or, for the purpose of the child care subsidy program under s. 49.155, Stats., the same meaning as “child care administrative agency” under s. DCF 201.02 (3).

**SECTION 3. DCF 102.02 (11) (Note) is repealed.**

**SECTION 4. DCF 102.02 (12) is amended to read:**

**DCF 102.02 (12)** “Wisconsin works group” or “W-2 group” has the meaning given in s. 49.141 (1) (s), Stats., or, for the purpose of the child care subsidy program under s. 49.155, Stats., the same meaning as “assistance group” under s. DCF 201.02 (1g).

**SECTION 5. DCF 102.02 (12) (Note) is repealed.**

**SECTION 6. DCF 102.10 (title) is repealed and recreated to read:**

**DCF 102.10 (title) Reviews and hearings.**

**SECTION 7. DCF 102.10 (4) is repealed.**

**SECTION 8. DCF 102.10 (5) is created to read:**

**DCF 102.10 (5) HEARING FOR CHILD CARE.** Notwithstanding subs. (1) and (2), an applicant or a participant in the child care subsidy program under s. 49.155, Stats., that receives a notice of eligibility denial or termination for failure to cooperate with the child support agency without good cause may request a fair hearing under s. DCF 201.065, ch. 227 Stats., and ch. HA 3.

**SECTION 9. DCF 201.02 (1d), (1g), (1r), (7m) and (Note), (9g), and (9r) are created to read:**

**DCF 201.02 (1d)** “Approved activity” means an activity specified under s. 49.155 (1m) (a), Stats.

**(1g)** “Assistance group” means the individuals in a household that are included in determining eligibility for the child care subsidy program.

**(1r)** “Authorization” means a record created by the child care administrative agency that authorizes payment under the child care subsidy program for a specific child, a specific child care provider, and a specific number of hours.

**(7m)** “Copayment” means an amount that is calculated by the department’s automation system based on s. DCF 201.08 (1) (a) and (2) (bm) that reduces the amount of a parent’s subsidy payment.

**Note:** See the definition of “parent’s share” in s. DCF 201.02 (17g).

**(9g)** “Employability plan” means a written agreement used in the Wisconsin works program that includes the activities that a Wisconsin works program participant will engage in during a specified time period.

**(9r)** “Employment plan” means a written agreement used in the food stamp employment and training program under s. 49.79 (9), Stats., that includes the activities that a program participant will engage in during a specified time period.

**SECTION 10. DCF 201.02 (10) and (Note) are repealed.**

**SECTION 11. DCF 201.02 (11) is created to read:**

**DCF 201.02 (11)** “Federal poverty level” means the poverty guidelines that are established based on the number of individuals in a household and updated annually by the U.S. department of health and human services.

**SECTION 12. DCF 201.02 (15) (Note) is repealed.**

**SECTION 13. DCF 201.02 (16m) is created to read:**

**DCF 201.02 (16m)** “Nurse practitioner” has the same meaning as “advanced practice nurse” under s. N 8.02 (1).

**SECTION 14. DCF 201.02 (17) is repealed and recreated to read:**

**DCF 201.02 (17)** “Parent” means a custodial parent, foster parent, kinship care relative, guardian, legal custodian, subsidized guardian or interim caretaker under s. 48.623, Stats., or a person acting in place of a parent. “Parent” also includes the spouse or nonmarital coparent of a parent who resides in the same household as the parent.

**SECTION 15. DCF 201.02 (17) (Note) is repealed.**

**SECTION 16. DCF 201.02 (17g) and (Note) and (17s) are created to read:**

**DCF 201.02 (17g)** “Parent’s share” means the out-of-pocket cost of child care that a parent is responsible for paying to the child care provider, including any amount charged by the provider that exceeds the amount of the parent’s subsidy payment.

**Note:** See the definition of “copayment” in s. DCF 201.02 (7m).

**(17s)** “Physician assistant” has the same meaning as in s. 448.01 (6), Stats.

**SECTION 17. DCF 201.02 (18) is repealed.**

**SECTION 18. DCF 201.02 (21) and (21m) are created to read:**

**DCF 201.02 (21)** “Temporary break” means a parent’s time—limited absence from an approved activity due to illness, leave to care for family member, a student or holiday break, an interruption in work for a seasonal worker who is not working between regular industry work seasons, or any other cessation of an approved activity as long as the parent continues to be employed or enrolled in the approved activity and the absence does not exceed 3 months.

**(21m)** “Twelve-month eligibility period” means the period between the determination of parent’s eligibility and the following redetermination or between redeterminations of a parent’s eligibility.

**SECTION 19. DCF 201.03 (title) is amended to read:**

**DCF 201.03 (title) Department of ~~children and families~~ powers and responsibilities.**

**SECTION 20. DCF 201.034 (2) (c) is amended to read:**

**DCF 201.034 (2) (c)** Assessing ~~a family’s~~ an assistance group’s need for child care.

**SECTION 21. DCF 201.036 (2) is amended to read:**

**DCF 201.036 (2) AGENCY DETERMINATION.** A care administrative agency shall determine a parent’s eligibility for the child care subsidy program under s. 49.155 (1m), Stats., and this section.

**SECTION 22. DCF 201.036 (2e), (2m), and (2s) are created to read:**

**DCF 201.036 (2e) EXCLUSIONS FROM LIMIT ON LIQUID ASSETS.** Financial resources that are not cash on hand or funds in checking, savings, money market, or credit union share accounts that can be withdrawn without incurring penalties are excluded from the definition of liquid assets for the purpose of the liquid asset limit under s. 49.155 (1m) (cm), Stats.

**(2m)** LIMITS ON THE VALUE OF AN ASSISTANCE GROUP'S HOME AND VEHICLES. (a) *Hardship exemptions*. A parent who first applies for the child care subsidy program on or after January 1, 2019, is subject to the asset limits under s. 49.155 (1m) (cr), Stats., unless any of the following conditions are met:

1. The parent is the child's foster parent.
2. The parent is a kinship care relative receiving payments under s. 48.57 (3m) or (3n), Stats., and the child was placed in kinship care relative's home under a court order.
3. The parent is the child's guardian or interim caretaker under s. 48.623, Stats.
4. Ownership of an applicable asset is unclear due to a recent death or change in the composition of the assistance group.
5. The assistance group is homeless.

(b) *Agricultural land and buildings excluded from value of home*. 1. In this paragraph, "agricultural land" includes the value of associated buildings used for agricultural purposes.

2. In calculating the value of a home owned by the assistance group under s. 49.155 (1m) (cr) 1., Stats., the child care administrative agency shall exclude the value of any agricultural land owned by the assistance group.

**(2s)** ADDRESS VERIFICATION. Except when the parent is homeless or is registered with the address confidentiality program under s. 165.68, Stats., a parent shall submit verification of the parent's place of residence to the child care administrative agency at the parent's eligibility determination and redetermination.

**SECTION 23. DCF 201.036 (3) is repealed.**

**SECTION 24. DCF 201.036 (4) is amended to read:**

(4) ANNUAL ~~RENEWAL~~ REDETERMINATION OF ELIGIBILITY. A child care administrative agency shall ~~review~~ redetermine a parent's eligibility no sooner than 12 months following the initial determination of the parent's eligibility or the parent's most recent annual ~~renewal~~ redetermination of eligibility, unless the parent requests a ~~renewal~~ redetermination sooner to coincide with a timely redetermination of eligibility for another program.

**SECTION 25. DCF 201.036 (4) (Note) is repealed.**

**SECTION 26. DCF 201.036 (5) is created to read:**

**DCF 201.036 (5) ELIGIBILITY TERMINATION.** During a parent's 12-month eligibility period, the child care administrative agency shall terminate a parent's eligibility if any of the following conditions are met:

(a) The gross income of the assistance group exceeds 85 percent of the state median income for a household of the same size.

(b) The parent is not participating in an approved activity, is not taking a temporary break from an approved activity, and is not in the 3-month eligibility period following a permanent end to the parent's participation in an approved activity.

(c) The child care administrative agency or the department determines that the parent committed an intentional program violation that invalidates a prior determination of the parent's eligibility.

(d) A member of the assistance group fails to cooperate with the child support agency without good cause under ch. DCF 102.

(e) The assistance group moves out of the state.

**SECTION 27. DCF 201.037 is created to read:**

**DCF 201.037 Reporting requirements. (1) REPORT WITHIN 10 DAYS.** A parent shall notify the child care administrative agency within 10 calendar days after the date of any of the following:

(a) *Financial.* The date that the assistance group receives the first payment that includes an increase in the gross income of the assistance group if any of the following conditions are met:

1. The gross income of the assistance group is at or below 185 percent of the federal poverty level, and the assistance group's gross income increases by \$250 or more per month.
2. The gross income of the assistance group exceeded 185 percent of the federal poverty level at the parent's last eligibility redetermination and exceeds a dollar amount that will increase the assistance group's gross income above the next 5 percent increment of the federal poverty level.

(b) *Nonfinancial.* 1. The parent is no longer employed or enrolled in an approved activity.

2. The parent is taking a temporary break that is expected to be longer than a calendar month but not more than 3 months.

3. The child has not been in attendance at child care by the authorized provider within the previous 20 calendar days.

4. The number of days or hours that the parent needs child care has changed from what was previously provided to the child care administrative agency.

5. The parent is participating in a different approved activity.

6. The child care provider gives the parent a discounted price.

7. A member of the assistance group gets married or divorced.

8. The composition of the assistance group changes.

9. The address or place of residence of the assistance group changes, including a change that is only temporary.

10. The assistance group moves out of the state.

(2) NEW PROVIDER. A parent shall notify the child care administrative agency of the parent's intent to change child care providers as specified under s. DCF 201.039 (12).

**SECTION 28. DCF 201.038 (8) (title) is amended to read:**

**DCF 201.038 (8) (title)** ~~INACTIVE FAMILY~~ ASSISTANCE GROUP.

**SECTION 29. DCF 201.039 (1) is repealed and recreated to read:**

**DCF 201.039 Authorizations. (1) ASSESSMENT OF NEED.** (a) *Eligibility determination and redeterminations.* 1. 'Authorization based on assessment.' At or following a parent's eligibility determination or redetermination, a child care administrative agency shall do all of the following:

- a. Determine the number of hours of child care for which the parent may receive a subsidy.
- b. Issue an authorization based on the number of hours determined in the assessment.

2. '12 months.' The authorization shall continue for 12 months until the parent's next eligibility redetermination, except as provided under pars. (b) to (d).

(b) *Expected changes.* A child care administrative agency may determine whether to issue an authorization that continues for 12 months until the parent's next eligibility redetermination or an authorization that ends on the date of any of the following expected changes:

1. The date that a parent's employability plan will expire if the parent is participating in the Wisconsin works program under s. 49.155 (1m) (a) 3., Stats.
2. The date that a parent's employment plan will expire if the parent is participating in the food stamp employment and training program under s. 49.155 (1m) (a) 3m., Stats.
3. The end of a parent's school term.

(c) *Authorization based on new assessment.* A child care administrative agency shall determine the number of hours that a parent needs child care and issue an authorization based on the assessment at all of the following times:



1. When a school year begins for a school-age child.
2. The end of a parent's 24-month education time limit under s. 49.155 (1m) (a) 4. and 5., Stats.
3. When a second parent or a minor who is the biological parent of the child becomes a member of the assistance group.
4. When the parent requests an authorization and more than one calendar month has passed since the parent's previous authorization ended.
5. When the parent changes child care providers.

(d) *Assessments following a reported change.* During a parent's 12-month eligibility period, the child care administrative agency may determine the number of hours that the parent needs child care after the parent reports a change under s. DCF 201.037 that may affect the number of hours needed, except as specified under par. (c) or sub. (2g).

(e) *Option for continuity of care following assessment.* If a child care administrative agency assesses a parent's need for child care under par. (b) or (d) and determines that the parent needs fewer hours of child care than the number of hours in the parent's most recent authorization, the agency shall allow the parent to continue with the most recent authorization or issue a new authorization for up to the same number of hours, except as provided under par. (c).

**SECTION 30. DCF 201.039 (2) (c) is amended to read:**

**DCF 201.039 (2) (c)** Any other information requested by the agency regarding the ~~family's~~ parent's need for child care.

**SECTION 31. DCF 201.039 (2g) and (2r) are created to read:**

**DCF 201.039 (2g) CONTINUITY OF CARE.** (a) The child care administrative agency shall allow the parent to continue under the most recent authorization or offer the parent an authorization for up

to the same number of hours as the parent's previous authorization when any of the following changes begin:

1. The parent begins a temporary break.

2. The parent is no longer participating in any approved activity and is beginning the 3-month eligibility period following the permanent loss of an approved activity under s. 49.155 (1m) (a) (intro.), Stats.

(b) 1. A parent may not consecutively take a temporary break of 3 months and continue eligibility for a 3-month period after the parent permanently ceases participation in any approved activity under s. 49.155 (1m) (a) (intro.), Stats.

2. A parent that ceases employment or enrollment in any approved activity during a temporary break may continue eligibility under s. 49.155 (1m) (a) (intro.), Stats., for the difference between 3 months and the time spent in the temporary break before ceasing employment or enrollment.

**(2r) EXCESSIVE UNEXPLAINED ABSENCES.** (a) If a child care provider notifies the child care administrative agency that a child has not attended child care within the previous 30 calendar days and the child's parent has not provided an explanation to the child care provider, the child care administrative agency shall make multiple attempts to contact the parent to determine if the parent's need for child care has changed.

(b) The child care administrative agency shall terminate the parent's authorization if the agency's efforts at contacting the parent are unsuccessful.

**SECTION 32. DCF 201.039 (4) (title) is repealed and recreated to read:**

**DCF 201.039 (4) (title) ASSISTANCE GROUP WITH TWO PARENTS.**

**SECTION 33. DCF 201.039 (4) is renumbered (4) (a) and amended to read:**

**DCF 201.039 (4) (a)** In ~~two-parent families~~ an assistance group with 2 parents, both parents shall meet the eligibility criteria in s. 49.155 (1m), Stats., and s. DCF 201.036, unless the child care administrative agency verifies that one parent has a disability or health condition that makes that parent unable to participate in an approved activity ~~under s. 49.155 (1m) (a), Stats.~~, and unable to provide the child care necessary for the second parent to participate in an approved activity ~~under s. 49.155 (1m) (a), Stats.~~ The agency shall require the parent to provide documentation of the disability or health condition from a doctor, physician assistant, nurse practitioner, psychiatrist, or psychologist.

**SECTION 34. DCF 201.039 (4) (b) is created to read:**

**DCF 201.039 (4) (b)** When assessing a parent's need for child care, the child care administrative agency shall consider the availability of a minor in the assistance group who is the biological parent of the child.

**SECTION 35. DCF 201.039 (5) (a) and (7) (title) are amended to read:**

**DCF 201.039 (5) (a)** Care is provided to 3 or more children from the same ~~family~~ assistance group.

**(7) (title)** AUTHORIZATION CRITERIA FOR A CHILD CARE PROVIDER'S CHILD.

**SECTION 36. DCF 201.039 (7) (a) 5. is repealed and recreated to read:**

**DCF 201.039 (7) (a) 5.** The parent is a kinship care relative receiving payments under s. 48.57 (3m) or (3n), Stats., and the child has been placed with the kinship care relative under a court order.

**SECTION 37. DCF 201.039 (7) (a) 6. (intro.) is repealed.**

**SECTION 38. DCF 201.039 (7) (a) 6. a. is renumbered DCF 201.039 (7) (a) 6. and amended to read:**

**DCF 201.039 (7) (a) 6.** The child's biological parent is a dependent minor child under the age of ~~18~~ 19 who attends high school or participates in a course of study meeting the standards established by the state superintendent of public instruction for the granting of a declaration of equivalency of high school graduation.

**SECTION 39. DCF 201.039 (7) (a) 6. b. is repealed.**

**SECTION 40. DCF 201.039 (10) (a) is amended to read:**

**DCF 201.039 (10) (a)** After a parent has provided all of the information required under sub. (2) and the child care administrative agency has completed the assessment of the ~~family's~~ assistance group's need for child care, the agency shall issue a written authorization notice to the parent approving payment for child care through the subsidy program based on the specific provisions in the notice.

**SECTION 41. DCF 201.039 (10m) is created to read:**

**DCF 201.039 (10m) DECLARATION OF DISASTER.** An authorization issued for child care for a specific provider at a specific location may remain effective at another provider that meets the conditions under s. DCF 201.038 (1) if the location identified in the authorization is within an area covered by a declaration of a state of emergency by the governor under s. 323.10, Stats.

**SECTION 42. DCF 201.039 (11) (a) (title), 1. (intro.), 2. (intro.) and a., and (b) and (13) (a) (intro.), 1. a., b., c., and 2. (intro.) are amended to read:**

**DCF 201.039 (11) (a) (title)** *Authorization within 30 days after request for assistance or redetermination.*

1. (intro.) If an agency determines that a parent is eligible for the subsidy program under s. 49.155 (1m), Stats., and the parent submits the information required under sub. (2) to the agency within 30 days after the date that the parent submitted a request for assistance or the date of the parent's eligibility redetermination, the agency may authorize payment beginning on the date that all of the following conditions are met:

2. (intro.) Notwithstanding subd. 1., if an agency determines that a parent is eligible for the subsidy program under s. 49.155 (1m), Stats., and the parent submits the information required under sub. (2) to the agency within 30 days after the date that the parent submitted a request for assistance or the date of the parent's eligibility redetermination, the agency may authorize payment beginning on the later of the date of child placement or the first day of the month in which the parent submitted the request for assistance or the month of the parent's eligibility redetermination if all of the following conditions are met:

a. The parent is a kinship care relative receiving payments under s. 48.57 (3m), Stats., and is providing care and maintenance for the child who is placed in the kinship care relative's home pursuant to a court order ~~under ch. 48 or 938, Stats.~~

(b) *Authorization more than 30 days after request for assistance or redetermination.* If an agency determines that a parent is eligible for the subsidy program under s. 49.155 (1m), Stats., and the parent submits the information required under sub. (2) to the agency more than 30 days after the date that the parent submitted a request for assistance or the date of the parent's eligibility redetermination, the agency may authorize payment for child care services beginning the first day of the month in which the parent submits the information required under sub. (2) if all of the conditions in par. (a) 1. a. to c. are met.

(13) (a) (intro.) The family assistance group is experiencing circumstances that create an unforeseen hardship for the child to continue to attend the authorized provider for the remainder of the month due to any of the following:

1. a. The family assistance group relocated to escape domestic abuse.
- b. The family assistance group was evicted from their home.
- c. The family assistance group was formerly homeless and has moved into stable housing.

2. (intro.) The authorized provider is unable to meet the ~~family's~~ parent's need for child care after any of the following:

**SECTION 43. DCF 201.04 (2) (ag) and (ar) are created to read:**

**DCF 201.04 (2) (ag)** *Decreases in the subsidy amount during the 12-month eligibility period.*

During a parent's 12-month eligibility period, the amount of a child care subsidy payment may not be decreased, unless any of the following conditions are met:

1. The parent voluntarily requests fewer hours of subsidized child care.
2. The parent agrees to fewer hours of subsidized child care under s. DCF 201.039 (1) (e) or (2g).
3. The child care administrative agency issues a new authorization for fewer hours than the parent's previous authorization under s. DCF 201.039 (1) (c).
4. The parent's copayment increases under s. DCF 201.08 (4) (b) or (c).

(ar) *Reduction in provider rating.* The reduction of a parent's child care subsidy payment following a reduction in the quality rating of the parent's provider from a 3-star rating under s. 49.155 (6) (e) 3. c., Stats., to a 2-star rating under s. 49.155 (6) (e) 3. b., Stats., may not become effective until the parent's next eligibility redetermination.

**SECTION 44. DCF 201.04 (2g) is repealed.**

**SECTION 45. DCF 201.08 (1) is renumbered DCF 201.08 (1) (a) and amended to read:**

**DCF 201.08 (1) SCHEDULE.** (a) The department shall set a schedule for parent copayment responsibilities for all parents who receive ~~child care financial assistance under s. 49.155, Stats., excluding s. 49.155 (1g), Stats.~~ a child care subsidy, except as provided under sub. (2). Copayment amounts will be based on ~~family~~ the size of the assistance group, family the assistance group's gross income, and the number of children in a given family 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 46. DCF 201.08 (1) (b) is created to read:**

**DCF 201.08 (1) (b)** A parent's share of payment may be more than the copayment amount determined using the copayment schedule in Table DCF 201.08. If a provider's price is higher than the department's maximum rate, the parent's share of payment will be the difference between the provider's price and the subsidy payment, plus any other fees the provider charges.

**SECTION 47. DCF 201.08 (2) and (Notes) are repealed and recreated to read:**

**DCF 201.08 (2) EXCEPTIONS.** (am) Notwithstanding sub. (1), no parent may be assessed any copayment responsibility if any of the following conditions are met:

1. The parent is the child's foster parent.
2. The parent is the child's subsidized guardian or interim caretaker under s. 48.623, Stats.
3. The parent is a kinship care relative receiving payments under s. 48.57 (3m) or (3n), Stats., and the child was placed in the kinship care relative's home under a court order.
4. The biological parent of the child is a minor attending school subject to the requirements of s. 49.26, Stats.

**Note:** Section 49.26 (1) (e), Stats., prohibits copayment responsibility for a minor teen parent who is attending school subject to the Learnfare school attendance requirement.

(bm) A parent shall be assessed the minimum copayment amount for the number of children in the assistance group under Table DCF 201.08 if any of the following conditions are met:

1. The parent is the kinship care relative of a child that was not placed in the relative's home under a court order.

2. The parent is under the age of 20 and is attending high school or participating in a course of study meeting the standards established under s. 115.29 (4), Stats., for the granting of a declaration of equivalency to high school graduation.

(cm) A parent that leaves a Wisconsin works position for 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.

(dm) A parent that no longer meets the conditions of this subsection due to a change in circumstances, such as adoption of the child, may not be assessed the full copayment responsibility until the parent's next eligibility redetermination.

**Note:** If a provider's price is higher than the department's maximum rate, a parent with no copayment responsibility under this section will still be responsible for the difference between the provider's price and the subsidy amount, plus any fees the provider charges.

**SECTION 48. DCF 201.08 (3) (a) 2., 5., and 6. are amended to read:**

**DCF 201.08 (3) (a) 2.** A change in the ~~amount of funds~~ funding available for the child care ~~assistance~~ subsidy program.

5. A change in economic factors affecting the cost of child care to the state, such as an increase in ~~the demand for the child care financial assistance under s. 49.155, Stats., excluding s. 49.155 (1d) and (1g), Stats~~ subsidy program.



6. Funding is not sufficient to meet the needs of all eligible ~~families~~ assistance groups applying for or receiving a child care assistance subsidy.

**SECTION 49. DCF 201.08 (3) (a) 7. and (4) are created to read:**

**DCF 201.08 (3) (a) 7.** To serve the purposes of the child care subsidy program.

**(4) COPAYMENT INCREASES DURING 12-MONTH ELIGIBILITY PERIOD.** During a parent's 12-month eligibility period, the parent's copayment amount may not be increased unless any of the following conditions are met:

(a) *More hours.* The increased copayment amount corresponds to an increase in the number of hours authorized for a child care subsidy to the parent,

(b) *Income at or above 190 percent at redetermination.* All of the following conditions are met:

1. At the parent's last eligibility redetermination, the gross income of the assistance group was at or above 190 percent of the federal poverty level but under 200 percent of the federal poverty level.

2. The increased copayment amount corresponds to an increase in the federal poverty level of the assistance group under Table DCF 201.08.

3. The copayment amount does not exceed the amount that is assessed for an assistance group at 200 percent of the federal poverty level under Table DCF 201.08.

(c) *Income at or above 200 percent at redetermination.* All of the following conditions are met:

1. The gross income of the assistance group was at or above 200 percent of the federal poverty level at the parent's last eligibility redetermination.

2. The parent's copayment increases by \$1 for every \$3 by which the gross income of the assistance group exceeds 200 percent of the federal poverty level.

**SECTION 50. EFFECTIVE DATE.** This rule shall take effect the first day of the month following publication in the Administrative Register, as provided in s. 227.22 (2) (intro.), Stats.