

## Clearinghouse Rule 21-091

### State of Wisconsin Department of Children and Families

## Technical Corrections to Wisconsin Works Rules

### Chapter DCF 101

The Wisconsin Department of Children and Families proposes **to repeal** ss. DCF 101.03 (17) and (18), 101.05 (5) and (6), 101.21 (2), 101.22, and 101.24; **to renumber** s. DCF 101.21; **to amend** ss. DCF 101.03 (4), (7), and (15); 101.04 (2) (Note); 101.055 (6); 101.08 (2); 101.09 (2) (c) (intro.), (m), (q) and (3) (b) 2. d.; 101.10 (1) (c); 101.11 (1); 101.14 (2) (title), (intro.), (c), and (d); 101.15 (3) (b) 2. and 3.; 101.16 (1) (a) 1. and 3. and (b), (2) (title), (a), (b) 1., (c), and (e) 1., (3) (c) 1. and (e) 2., and (4) (a) 1. and (e) 1.; 101.18 (1) (a); 101.18 (2); 101.20 (1) (intro.); 101.23 (3), and (6); and 101.25 (5) (e), (7) (a) 8. (intro.), (9) (a) 2. b. and (b), and (11) (a) 1.; **to repeal and recreate** ss. DCF (24), (26), (27), (34), (39), and (40); DCF 101.05 (10); 101.055 (6) (Note); and to **create** ss. DCF 101.03 (4m) and 101.17 (Note), relating to technical corrections to Wisconsin Works rules.

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

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

**Statutes interpreted:** Sections 49.141 to 49.161, Stats.

**Related statutes and rules:** Chapters DCF 102 and 201

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

The department administers the Wisconsin Works program under ss. 49.141 to 49.161, Stats.

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 proposed rule makes statutory updates, clarifications, and minor substantive changes to ch. DCF 101, Wisconsin Works.

The proposed rule does all of the following:

- Replaces references to “trial jobs” with “temporary employment match program” throughout the chapter based on changes to s. 49.147 (3), Stats.
- Changes several definitions to statutory cross-references to incorporate changes to the definitions in s. 49.141, Stats.
- Repeals the Wisconsin Works agency responsibility to establish a children’s service network under 49.143 (2), Stats. That statute has been repealed.

- Repeals references to Wisconsin Works agencies determining eligibility for child care assistance in ss. DCF 101.05 and 101.11. Eligibility for the child care subsidy program is determined by child care administrative agencies.
- Repeals obsolete language regarding job centers in ss. DCF 101.03 (17) and (18) and 101.05 (6).
- Changes who conducts the department review of a complaint of employment displacement by a Wisconsin Works employment position under s. DCF 101.055 from the administrator of the department's Division of Family and Economic Security to the Division of Hearings and Appeals.
- Adds the definition of domestic abuse when screening for domestic abuse to the provision that requires a Wisconsin works agency to keep all information that it receives regarding victims of domestic abuse strictly confidential except to the extent needed to administer Wisconsin works. The current confidentiality provision in s. DCF 101.08 (2) applies only to domestic abuse as defined in ss. 968.075 (1) and 813.12 (1) (am), Stats., for purposes of arrest and prosecution and restraining orders and injunctions.
- Repeals the requirement that a trial job employer process a participant's request for an advance payment of a federal earned income credit payment under section 3507 of the Internal Revenue Code. Pub. L. 111-226 repealed section 3507 of the Internal Revenue Code.
- Incorporates updates to s. 49.147 (4) to (6), Stats., by adding cross-references to the new statutory provisions in s. DCF 101.16 on community service jobs and transitional jobs, and creating a note following s. DCF 101.17 on job access loans.
- Repeals language on intentional program violations in s. DCF 101.21 (2) that conflicts with s. 49.151 (2), Stats.
- Moves language on good cause for failing to appear at a scheduled review from the review section to the good cause section.
- Repeals DCF 101.22, relating to review of agency decisions, which conflicts with s. 49.152, Stats.
- Repeals s. DCF 101.24, relating to noncustodial, minor and other parents, which conflicts with s. 49.159, Stats.

### **Summary of Factual Data and Analytical Methodologies**

The focus of the proposed rule is to update rules that are duplicative of, superseded by, or in conflict with another rule or a state statute.

### **Summary of Related Federal Law**

Not applicable

### **Comparison to Adjacent States**

Not applicable

**Effect on Small Businesses**

The proposed rule does not affect small businesses as defined in s. 227.114 (1), Stats.

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

The impact of the proposed rule is limited to agencies administering the Wisconsin works program and families and individuals participating in the Wisconsin works program. No Wisconsin works agency is a small business as defined s. 227.114 (1), Stats.

**Agency Contact**

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**Place Where Comments are to be Submitted and Deadline for Submission**

Comments may be submitted to Elaine Pridgen, Department of Children and Families, 201 W. Washington Ave, P.O. Box 8916, Madison, WI, 53708-8916 or dcfpublichearing@wisconsin.gov. The comment deadline is January 6, 2022.

**SECTION 1. DCF 101.03 (4) is amended to read:**

**DCF 101.03 (4)** “Case management” means the family-centered and goal-oriented process for assessing the needs of a Wisconsin works group member and ~~his or her~~ the group member’s family for employment, training, and supportive services and assisting the Wisconsin works group member in obtaining services to achieve self-sufficiency.

**SECTION 2. DCF 101.03 (4m) is created to read:**

**DCF 101.03 (4m)** “Child care administrative agency” means any of the following:

(a) An agency that has a contract with the department to administer the child care subsidy program.

(b) An agency that has a subcontract to administer the child care subsidy program with an agency that has a contract with the department.

(c) In a county with a population of 750,000 or more, the department or the Milwaukee County enrollment services unit as provided in ss. 49.155 (3g) (a) and 49.825 (2) (b), Stats.

**SECTION 3. DCF 101.03 (7) and (15) are amended to read:**

**DCF 101.03 (7)** “Component of Wisconsin works” means a trial employment match program job, community service job, transitional placement, or unsubsidized employment.

**(15)** “Incapacitated” means having a medically-determined physical or mental impairment ~~which~~ that has been verified by the ~~department’s~~ department of workforce development’s division of vocational rehabilitation or other similar agency or business and ~~which~~ that prevents the person from temporarily or permanently holding full-time unsubsidized employment or participating in a trial employment match program job or CSJ.

**SECTION 4. DCF 101.03 (17) and (18) are repealed.**

**SECTION 5. DCF 101.03 (24), (26), (27), (34), (39), and (40) are repealed and recreated to read:**

**DCF 101.03 (24)** “Minimum wage” has meaning given in s. 49.141 (1) (g), Stats.

**(26)** “Nonmarital parent” has the meaning given in s. 49.141 (1) (i), Stats.

**(27)** “Parent” has the meaning given in s. 49.141 (1) (j), Stats.

**(34)** “Trial employment match program job” has the meaning given in s. 49.141 (1) (n), Stats.

**(39)** “Wisconsin works employment position” has the meaning given in s. 49.141 (1) (r), Stats.

**(40)** “Wisconsin works group” has the meaning given in s. 49.141 (1) (s), Stats.

**SECTION 6. DCF 101.04 (2) (Note) is amended to read:**

**DCF 101.04 (2) Note:** An individual may contact the local W-2 agency or the local county or tribal department of human services or social services for assistance in determining which geographical area ~~he or she~~ the individual resides in and the address and phone number of the W-2 agency in ~~his or her~~ the individual’s geographical area.

**SECTION 7. DCF 101.05 (5) and (6) are repealed.**

**SECTION 8. DCF 101.05 (10) is repealed and recreated to read:**

**DCF 101.05 (10)** Refer individuals who need child care assistance to the local child care administrative agency.

**SECTION 9. DCF 101.055 (6) is amended to read:**

**DCF 101.055 (6) DEPARTMENT REVIEW.** A party may file a written request for a department review within 10 days of receiving an adverse decision from the W-2 agency or its designee or within 15 days from the date the decision was due if the parties did not receive a decision. The review shall be conducted by the ~~administrator of the department's division of family and economic security or a designee~~ department of administration's division of hearings and appeals. The department's final decision shall be issued within 30 calendar days from the date the request for departmental review was filed.

**SECTION 10. DCF 101.055 (6) (Note) is repealed and recreated to read:**

**DCF 101.055 (6) (Note)** A request for departmental review may be mailed to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875; faxed to (608) 264-9885; or delivered to 4822 Madison Yards Way, Madison, WI 53705.

**SECTION 11. DCF 101.08 (2) is amended to read:**

**DCF 101.08 (2)** The Wisconsin works agency shall keep all information that it receives regarding victims of domestic abuse as defined in ss. DCF 101.03 (11) and 101.15 (3) (a) strictly confidential, except to the extent needed to administer Wisconsin works.

**SECTION 12. DCF 101.09 (2) (c) (intro.), (m), (q), and (3) (b) 2. d. are amended to read:**

**DCF 101.09 (2) (c) (intro.)** The individual is a United States citizen, national of the United States, or qualified alien. An individual is a qualified alien if ~~he or she~~ the individual is any of the following:

(m) The individual reports any change in circumstances that may affect ~~his or her~~ the individual's eligibility to the Wisconsin works agency within 10 days after the change.

(q) The individual cooperates in the requirement to search for unsubsidized employment throughout ~~his or her~~ the individual's participation in a W-2 employment position.

(3) (b) 2. d. When the individual is a sponsored alien pursuant to 8 USC 1183a, the income of the sponsor and ~~his or her~~ the sponsor's spouse as provided under 8 USC 1631.

**SECTION 13. DCF 101.10 (1) (c) is amended to read:**

**DCF 101.10 (1) (c)** The custodial parent continues to exercise responsibility for the care and control of the child. ~~A dependent child who~~ If an individual is receiving kinship care payments under s. 48.57 (3m), Stats., for the care of the child, the child is not considered to be under the care and control of the custodial parent.

**SECTION 14. DCF 101.11 (1) is amended to read:**

**DCF 101.11 (1)** The W-2 agency shall verify that an individual meets nonfinancial and financial eligibility criteria under s. DCF 101.09 (2) and (3) prior to placing ~~an~~ the individual in a W-2 employment position, ~~nonfinancial and financial eligibility criteria under s. 49.155 (1m), Stats., and s. DCF 101.26 prior to providing a child care subsidy or other appropriate~~ eligibility criteria prior to providing any other W-2 benefit or service.

**SECTION 15. DCF 101.14 (2) (intro.), (c), and (d) are amended to read:**

**DCF 101.14 (2) TRIAL EMPLOYMENT MATCH PROGRAM JOB.** (intro.) ~~A~~ An employer that employs a participant in the trial job employer employment match program shall agree to do all of the following:

(c) Provide the participant with worker's compensation coverage. ~~If the trial job employer is required to provide worker's compensation insurance for its unsubsidized employees, the trial job employer shall provide the same level of coverage for the trial job participants.~~

(d) Inform the participant of ~~his or her~~ the participant's possible eligibility for federal and state earned income credit and process a participant's request for advance payments of federal earned income credit under section 3507 of the internal revenue code tax credits.

**SECTION 16. DCF 101.15 (3) (b) 2. and 3. are amended to read:**

**DCF 101.15 (3) (b) 2.** If a W-2 participant was not screened during ~~his or her~~ the participant's initial employability planning process, a W-2 agency shall administer a screening to assess the potential that an individual is or has been a victim of domestic abuse or is at risk of further domestic abuse at the participant's next review or at the time of the participant's next change of employment placement, whichever is sooner.

3. A W-2 agency shall allow an individual to voluntarily and confidentially disclose that ~~he or she~~ the individual is or has been a victim of domestic abuse or is at risk of further domestic abuse.

**SECTION 17. DCF 101.16 (1) (a) 1. and 3. and (b), (2) (title), (a), (b) 1., (c), and (e) 1., (3) (c) 1. and (e) 2., and (4) (a) 1. and (e) 1. are amended to read:**

**DCF 101.16 (1) (a) 1.** An individual who applies for a Wisconsin works employment position may be required by the Wisconsin works agency to search for unsubsidized employment during the period that ~~his or her~~ the individual's application is being processed as a condition of eligibility.

3. ~~A~~ As a condition of eligibility, a Wisconsin works agency may require an applicant for a Wisconsin works employment position to participate in job orientation ~~during the period that his or her~~ while the application is being processed ~~as a condition of eligibility~~. In this subdivision, "job orientation" means activities designed to help applicants prepare for work by learning



general workplace expectations, work behavior and attitudes necessary to successfully compete in the labor market, help an applicant build self-esteem and increase an applicant's self-confidence.

(b) *Job search assistance.* A Wisconsin works agency shall assist a participant ~~in his or her~~ with the search for unsubsidized employment. In determining an appropriate placement for a participant, a Wisconsin works agency shall give priority to placement in unsubsidized employment over placements under subs. (2) to (4).

(2) (title) TRIAL EMPLOYMENT MATCH PROGRAM JOBS.

(a) In determining an appropriate placement for a participant, a Wisconsin works agency shall give priority to placement in a trial employment match program job over a placement in a community service job or transitional placement under subs. (3) and (4).

(b) 1. A Wisconsin works agency shall pay a wage subsidy to an employer that employs a participant in a trial employment match program job and agrees to make a good faith effort to retain the participant as a permanent unsubsidized employee after the wage subsidy is terminated.

(c) *Education or training activities.* A trial employment match program job includes education and training activities, as prescribed by the employer as an integral part of work performed in the trial employment match program job ~~employment~~.

(e) 1. A W-2 participant may participate in a trial employment match program job for a maximum of 3 months, with an opportunity for a 3-month extension under circumstances determined by the Wisconsin works agency. A participant may participate in more than one trial employment match program job, but may not exceed a total of 24 months of participation under this subsection. The months need not be consecutive.

(3) (c) 1. Except as provided in par. (d) and s. 49.147 (4) (av) and (5m), Stats., a Wisconsin works agency may require a participant placed in a community service job program to work not more than 30 hours per week in a community service job. Except as provided in subd. 2., a Wisconsin works agency may require a participant placed in the community service job program to participate in education or training activities under par. (b) for not more than 10 hours per week.

(e) 2. The department, or the Wisconsin works agency with the approval of the department, may grant an extension to the 24-month limit on a case-by-case basis if the Wisconsin works agency determines that the individual has made all appropriate efforts to find and accept unsubsidized employment and has been unable to find unsubsidized employment because local labor market conditions preclude a reasonable employment opportunity in unsubsidized employment for that participant, as determined by a Wisconsin works agency and approved by the department, and if the Wisconsin works agency determines, and the department agrees, that no trial employment match program job opportunities are available in the specified local labor market.

(4) (a) 1. The individual is incapable of performing a trial employment match program job or community service job.

(e) 1. Except as provided in par. (f) and s. 49.147 (5) (bt) and (5m), Stats., a Wisconsin works agency may require a participant placed in a transitional placement to engage in activities under par. (b) 1. for up to 28 hours per week. Except as provided in subd. 2., in addition to the 28 hours, a Wisconsin works agency may require a participant placed in a transitional placement to participate in education or training activities under par. (d) for not more than 12 hours per week.

**SECTION 18. DCF 101.17 (Note) is created to read:**

**DCF 101.17 (Note):** See s. 49.147 (6) (am), Stats., regarding vehicle loan requirements and s. 49.147 (6) (e), Stats., regarding eligibility for noncustodial parents.

**SECTION 19. DCF 101.18 (1) (a) is amended to read:**

**DCF 101.18 (1) (a)** *Trial employment match program jobs.* For a participant in a trial employment match program job, the amount established in the contract between the Wisconsin works agency and the trial ~~job~~ employment match program employer, but not less than minimum wage for every hour actually worked in the trial employment match program job, not to exceed 40 hours per week paid by the employer. Hours spent participating in education and training activities under s. DCF 101.16 (2) (c) shall be included in determining the number of hours actually worked.

**SECTION 20. DCF 101.18 (2) (a) is amended to read:**

**DCF 101.18 (2) (a)** A custodial parent of a child who is 8 weeks old or less and who meets the eligibility requirements under s. DCF 101.09 (2) and (3) may receive a monthly grant in the amount provided under s. 49.148 (1m), Stats. A Wisconsin works agency may not require a participant under this subsection to participate in a trial employment match program job, CSJ, or transitional placement.

**SECTION 21. DCF 101.20 (1) (intro.) is amended to read:**

**DCF 101.20 (1) GOOD CAUSE CIRCUMSTANCES.** (intro.) The FEP shall determine if a W-2 employment participant had good cause for not complying with the W-2 participation requirements or for failing to appear in person or by representative at a scheduled review under s. 49.152 (2), Stats. No good cause shall exist unless the participant provides timely notification of

the good cause reason to the FEP. Good cause ~~for failing to comply with the W-2 participation requirements~~ shall be any of the following circumstances:

**SECTION 22. DCF 101.21 (1) is renumbered DCF 101.21**

**SECTION 23. DCF 101.21 (2) is repealed.**

**SECTION 24. DCF 101.22 is repealed.**

**SECTION 25. DCF 101.23 (3) (a) and (6) are amended to read:**

**DCF 101.23 (3) (a)** Liability shall extend to any parent, nonmarital coparent, or stepparent whose family receives benefits under s. 49.148, 49.155, 49.157, or 49.19, Stats., during the period that ~~he or she~~ the parent, nonmarital coparent, or stepparent is an adult member of the same household, but ~~his or her~~ each individual's liability is limited to ~~such~~ that period. For the purpose of determining liability for an overpayment of a child care subsidy under s. 49.155, Stats., “parent” has the meaning given in s. 49.155 (1) (c), Stats.

**(6) TRIAL JOB EMPLOYMENT MATCH PROGRAM OVERPAYMENTS.** The W-2 agency shall recover any overpayment of benefits paid under s. DCF 101.18 (1) (a) from the debtor. The W-2 agency may not recover more than the amount that the W-2 agency or the department paid in wage subsidies for the debtor while the debtor was ineligible to participate under s. DCF 101.16 (2). The W-2 agency shall ask a former participant in a trial employment match program job who received overpayments to voluntarily repay the overpayment. If a former participant does not voluntarily repay the overpayment, the W-2 agency shall refer the debt to the department for further collection action.

**SECTION 26. DCF 101.24 is repealed.**

**SECTION 27. DCF 101.25 (5) (e), (7) (a) 8. (intro.), (9) (a) 2. b. and (b), and (11) (a) 1. are amended to read:**

**DCF 101.25 (5) (e)** The W-2 agency shall review a child's claim that ~~he or she~~ the child is exempt under sub. (7) from the school attendance requirement, determine if a child is required to participate in case management under sub. (8), and review a child's claim that ~~he or she~~ the child has a good cause reason under sub. (10) for not participating in case management.

**(7) (a) 8. (intro.)** The child is unable to attend school because ~~he or she~~ the child was expelled under s. 120.13 (1), Stats., and another school is not available for one of the following reasons:

**(9) (a) 2. b.** The child or ~~his or her~~ the child's parent is unable to comply with the learnfare case management plan because a service identified is not available and no appropriate alternative service as determined by the W-2 agency is available.

**(b)** The W-2 group of a child who fails to meet the school attendance requirement under sub. (4) without an exemption reason under sub. (7), or who fails to participate in case management under sub. (8) without good cause under sub. (10) and continues to fail to meet the school attendance requirement, may have a financial penalty imposed under sub. (11) as long as ~~he or she~~ the child continues to do so or until an exemption reason under sub. (7) or a good cause reason under sub. (10) is verified.

**(11) (a) 1.** That the CSJ or transitional benefit will be reduced or that a financial penalty will be imposed on a trial employment match program job participant, in the amount of \$50 per month per penalty not to exceed \$150 per W-2 group per month, because the child has failed to meet the school attendance requirement or the child has failed to participate in learnfare case management and continues to fail to meet the school attendance requirement.

**SECTION 28. EFFECTIVE DATE.** This rule shall take effect on the first day of the month following publication in the Administrative Register, as provided in s. 227.22 (2) (intro.), Stats.