



**State of Wisconsin
Department of Workforce Development
Division of Family Supports**

CHILD CARE RATES

DWD 56.06 (1)

The Wisconsin Department of Workforce Development proposes an order to amend s. DWD 56.06 (1) (a) 1. and to create s. DWD 56.06 (1) (a) 1m., relating to child care rates and affecting small businesses.

Analysis Prepared by the Department of Workforce Development

Statutory authority: Sections 49.155 (6) and 227.11, Stats.

Statutes interpreted: Section 49.155 (6), Stats.

Related statutes and rules: Section 48.65, Stats, and Chapters HFS 45, 46, and 55; Section 48.651, Stats., and Chapter DWD 55

Explanation of agency authority. Section 49.155 (6), Stats., provides that, subject to review and approval by the department, each county shall establish maximum reimbursement rates for child care services provided to eligible individuals by licensed and certified child care providers. Each county shall set the rate for licensed providers so that at least 75% of the number of places for children within the licensed capacity of all child care providers in the county can be purchased at or below that maximum rate. The maximum reimbursement rate for Level I certified providers may not exceed 75% of the rate established for licensed providers, and the maximum reimbursement rate for Level II certified providers may not exceed 50% of the rate established for licensed providers.

Summary of the proposed rule. Under s. DWD 56.06, the Department or each county must survey all licensed providers each year to determine the child care prices they charge the general community. The county or tribal agency annually sets maximum reimbursement rates based on the survey, unless the Department sets multi-county rates. The maximum rate for licensed providers is set so that at least 75% of the number of places for children within the licensed capacity of all child care providers in the county can be purchased at or below that maximum rate. Separate maximum rates are set for licensed group child care centers, licensed family child care centers, Level I certified family child care providers, and Level II certified family child care providers. Separate maximum rates are also set for children in various age groupings. The current rates are multi-county rates set by the Department in 2006.

In past years, the adjusted rates based on the annual survey have generally become effective January 1 of the new year. This rule provides that the rates will not be adjusted for the year beginning January 1, 2007, and the rates effective on December 31, 2006, will remain in effect.

Summary of related federal regulations. Under 45 CFR 98.43, a state must certify that state payment rates for the provision of child care services funded under the Child Care and Development Fund are sufficient to ensure equal access to child care services for eligible families as families not eligible for child care assistance. At a minimum, the state must show that it considered 3 key elements in determining that its child care program provides equal access for eligible families: 1) Adequate payment rates based on a local market rate survey conducted no earlier than two years prior to the effective date of the current plan; 2) Choice of the full range of categories and types of providers; and 3) Affordable copayments.

In the commentary issued with the regulation, the Administration for Children and Families notes that rates established at least at the 75th percentile of the market rate would be regarded as providing equal access. Under the former title IV-A child care program, states were required to set rates at this level. (63 FR 39936, 39959, July 24, 1998)

Comparison with rules in adjacent states. A 2006 study by the National Women's Law Center, entitled *State Child Care Assistance Policies 2006: Gaps Remain, With New Challenges Ahead* compared state 2006 reimbursement rates to market rates for child care centers. The study found that Wisconsin was one of 9 states that had reimbursement rates at or above the 75th percentile of the market rate in 2006 and one of 22 states that had reimbursement rates at or above 75th percentile of the market rate in 2001. The Department does not have comparative information on 2007 rates.

Michigan. Reimbursement rates have not been increased since 1997. Rates in 2006 were at the 75th percentile of 1996 market rates. In Wayne County, the percentage difference between the state rate and the 75th percentile of the market rate was -42% for center care of a 4-year-old and -46% for care of a one-year-old.

Minnesota. In Hennepin County, the percentage difference between the state 2006 rate and the 75th percentile of the market rate was -10% for center care of a 4-year-old and -12% for care of a one-year-old.

Illinois. In Cook County, the percentage difference between the state 2006 rate and the 75th percentile of the market rate was -33% for center care of a 4-year-old and -25% for care of a one-year-old.

Iowa. The percentage difference between the statewide 2006 rate and the 75th percentile of the market rate was -4% for center care of a 4-year-old and -6% for care of a one-year-old.

The National Women's Law Center study *State Child Care Assistance Policies 2006: Gaps Remain, With New Challenges Ahead* is available at <http://www.nwlc.org/pdf/StateChildCareAssistancePoliciesReport2006web.pdf>.

Summary of factual data and analytical methodologies. In January 2007, the Department estimated that the Wisconsin Shares child care subsidy program would have a fiscal year deficit of \$46 million due to flat federal funding, rising caseload, and increased provider costs. The Department implemented the policy to not adjust the reimbursement rates for 2007 as an emergency rule. In April, the Legislature appropriated an additional \$30 million for the program in 2007 Wisconsin Act 5. The emergency rule has been instrumental in the Department's ability to address the remaining \$16 million deficit. Moving into state fiscal year 2008, the Department continues to be challenged with potential deficit issues for the child care program.

By not increasing the maximum county rates reimbursed to child care providers, the Department will avoid the increased cost of using the rates based on the 2006 provider survey. By comparing the current rates used for the reimbursement versus the rates that would otherwise go into effect and annualizing the results, it is estimated that the Department will realize about \$8,400,000 in annual savings in federal block grant funds.

Effect of rule on small businesses. The rule will affect small businesses but will not have a significant economic impact on a substantial number of small businesses.

Analysis used to determine effect on small businesses. Pursuant to direction by the Small Business Regulatory Review Board, the Department adopted the following definitions to use in making the determination of whether a rule will have a significant economic impact on a substantial number of small businesses:

“Significant economic impact” means the rule increases overall expenses of small businesses by more than 5% per year or the rule decreases overall revenue of small businesses by more than 5% per year.

“Substantial number” means more than 25% of the businesses affected by the scope of the rule.

The total child care subsidy annual budget is \$300 million. The Department estimates that \$270 million is annually paid to 7,000 child care providers that are small businesses. Not increasing the child care subsidy maximum rates is estimated to decrease annual revenue to all child care providers by \$8.4 million and decrease revenue to child care providers that are small businesses by \$7.56 million. On average, the annual child care funds to a child care provider that is a small business is \$38,571. The average decreased revenue from the child care subsidy program to a provider due to not increasing the child care subsidy maximum rates is \$1,080 or 2.8%. The percentage decrease in overall revenue to a provider will be significantly less than 2.8% due to revenue from private pay

families and copayments from families receiving child care assistance. According to the UW-Extension's Wisconsin Child Care Research Partnership in 2001, there were 190,000 young children in out-of-home regulated child care, of whom 40,000 (21%) were funded by the subsidy. On average, we would expect providers, including those who are small businesses, to experience a decrease in overall revenue of about 0.5%.

The Department's more detailed analysis submitted to the Small Business Regulatory Review Board on June 29, 2007, is attached.

Agency contact person. Barbara Stiefvater, Child Care Section, (608) 266-8200, barbara.stiefvater@dwd.state.wi.us.

Place where comments are to be submitted and deadline for submission.

Comments may be submitted to Elaine Pridgen, Office of Legal Counsel, Dept. of Workforce Development, P.O. Box 7946, Madison, WI 53707-7946 or elaine.pridgen@dwd.state.wi.us. The comment deadline is May 9, 2007.

SECTION 1. DWD 56.06 (1) (a) 1. is amended to read:

DWD 56.06 Establishing county and tribal agency child care rates. (1)

ESTABLISHMENT OF MAXIMUM RATES. (a) *Responsibility*. 1. Except as provided in subd. 1m. or 2., a child care administrative agency shall annually set child care rates in accordance with the policies and procedures set out in this section unless the department sets maximum rates for a multicounty area which includes the particular county or tribal area.

SECTION 2. DWD 56.06 (1) (a) 1m. is created to read:

DWD 56.06 (1) (a) 1m. Notwithstanding subd. 1., the department shall set child care rates for the year beginning January 1, 2007, to be the same as the rates in effect on December 31, 2006.

SECTION 3. 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.