

Statement of Scope

Department of Children and Families

Rule Number: Chapter DCF 201

Relating to: Payment of the Child Care Subsidy for Low-Income Families

Rule Type: Emergency and Permanent

This statement of scope was approved by the governor on November 4, 2016.

1. Finding/nature of emergency (for emergency rules only)

An emergency rule is necessary to implement the department's new system for payment of the child care subsidy for low-income families in February 2017, as specified in the department's plan approved by the Joint Committee on Finance.

2. Detailed description of the objective of the rules

Parent Payments Replacing Provider Reimbursement

The emergency and proposed rules will implement a new system for payment of the child care subsidy for low-income families. Currently, after providing child care services for a child whose care is subsidized, a child care provider has up to 3 months to submit to the department a request for reimbursement with attendance report forms. The department pays the child care subsidy directly to the provider with minimal involvement by the parent. The parent pays the provider the difference between the subsidy amount and the provider's price, including a required copayment based on family size, income level, and other factors.

Under the new system, child care providers will no longer be billing the department for reimbursement. Payment arrangements will be between the provider and the parent. The department and a third-party EBT vendor will make the subsidy amount electronically available to the parent at the beginning of a month. The parent will be able to transfer payments to the provider via a website; telephone IVR (interactive voice response) system; or, if the provider chooses to lease the equipment, a point-of-sale card swipe system.

The funds will remain electronically available to the parent for payment to the authorized provider for 90 days and will then expire. The funds will only be transferrable to the specific provider for whom the parent received an authorization. Parents will continue to pay the difference between the provider's price and the subsidy amount from their own funds.

Currently, an agency generally issues an authorization for payment based on enrollment if the care will be by a licensed group provider. Authorizations for payment based on attendance are used if the care will be by a licensed family provider or a certified provider. With the new system, there will no longer be two types of authorizations. Authorizations for payment for child care by all types of providers will be based on a family's need for care.

Under the current payment system, after an applicant is determined to be eligible, a payment authorization can be backdated to the Sunday beginning the first week of the month if a provider who met the department's requirements for receiving subsidy payments has cared for the child during this time. Under

the new system, an authorization for payment may be backdated to the date of the parent's request for assistance.

The emergency and proposed rulemaking orders will update ch. DCF 201 to conform to the language and policies of the new system for subsidy payments. This will include repealing obsolete language, such as vouchers, enrollment and attendance-based authorizations, provider recordkeeping and reporting requirements, adjustment of enrollment-based authorizations based on attendance report forms, reimbursement to providers, refusal to issue payments to providers, and recoupment from providers. Since providers may be submitting attendance report forms and requests for reimbursement for 3 months after the effective date of the emergency rule, some transitional provisions relating to attendance records, provider reimbursement, refusal to issue payment to providers, and recoupment from providers will remain in the emergency rule for issues related to payment for care provided before the effective date of the rule.

Continuity of Care to Support Parents and Minimize Disruptions to Child's Development

The emergency and proposed rules will also implement new requirements in federal regulations that were adopted on September 30, 2016. The regulations provide that a state shall re-determine a child's eligibility for child care services no sooner than 12 months following the initial eligibility determination or most recent redetermination. Between the initial determination and redetermination, states are required to allow subsidy payments to continue at the same level during a parent's temporary absence from approved activities for a period not to exceed 3 months. Following a parent's loss or cessation of employment or approved activities that is not temporary, states are required to allow subsidy payments to continue at the same level for a period of at least 3 months.

Minor Clarifications

The rulemaking orders will also include minor changes to update and clarify program requirements, including the following:

- Create a provision in ch. DCF 201 that requires an individual to furnish a child care administrative agency with any relevant information that the agency determines is necessary, within 7 working days after receiving a request for the information from the agency. This requirement already exists in s. 49.145 (2), Stats., which applies to the child care subsidy program under s. 49.155 (1m) (b) 1., Stats.
- Repeal a section in the Wisconsin Works rules that only applies to the child care subsidy and incorporate the information into ch. DCF 201. Wisconsin statutes define "Wisconsin Works" as the assistance program for families with dependent children, administered under ss. 49.141 to 49.161, Stats. This definition includes the child care subsidy program in s. 49.155, Stats. In earlier years, subsidy requirements that applied to parents were included in the Wisconsin Works rules, and requirements that applied to providers were included in the subsidy rules. The department is now moving toward consolidating child care subsidy requirements as much as possible.
- Repeal a provision that authorizes use of the child care subsidy program for care by an unregulated child care provider when the care allows a food stamp employment and training program (FSET) enrollee to attend a program activity prior to the development of an employability plan. The FSET program does not have program activities prior to the development of an employability plan, so this provision is obsolete.
- Incorporate a policy definition into the rule. The current rule requires that a child care administrative agency redetermine a parent's eligibility and subsidy amount in a "timely manner" when the parent reports a change in circumstances. Timely redeterminations help to prevent payment errors. The rules will incorporate the current department policy that requires redeterminations within 2 working days after a parent's report of a change in circumstances.

No Waivers of the Immunization Requirement Based on Personal Conviction

The proposed rules will also require that children whose care is subsidized under s. 49.155, Stats., receive age-appropriate immunizations or obtain an exemption for a reason permitted under federal Child Care Development Fund (CCDF) regulations. For children whose care is subsidized by the CCDF, 45 CFR 98.41 (a) (1) (i) allows an exemption of the immunization requirement for children in child care centers whose parents object on religious grounds and children whose medical condition contraindicates immunization.

In Wisconsin, s. 252.04, Stats., requires that children in child care centers and students in elementary, middle, junior, and high school receive age-appropriate immunizations, unless the requirement is waived under s. 252.04 (3), Stats. This provision allows a waiver if a parent or student objects for reasons of health, religion, or personal conviction. The federal Administration for Children and Families, Office of Child Care, has approved the state's CCDF plan for 2016–2018 with conditions that include not allowing a waiver of age-appropriate immunization requirements based on a parent's personal conviction for children whose care is subsidized under s. 49.155, Stats.

3. Detailed explanation of statutory authority for the rules

The department administers the child care subsidy program under s. 49.155, Stats. Section 49.155, (3m) (a), Stats., as affected by 2013 Wisconsin Act 20, provides that the department shall issue benefits directly to individuals who are eligible for subsidies under this section or pay or reimburse child care providers.

Section 49.131 (3m), Stats., as affected by 2013 Wisconsin Act 20, provides that prior to implementing, and receiving funding for implementing, electronic benefit transfer of child care subsidies under s. 49.155, Stats., the department's implementation plan must be approved by the Joint Committee on Finance. The Committee approved the department's plan on January 12, 2015.

Section 49.155 (1m) Stats., specifies eligibility conditions for receiving a child care subsidy. 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 (1m) (g), Stats., provides that, except as provided in par. (bm), the individual may receive a subsidy if he or she meets the eligibility criteria under s. 49.145 (2) (f), (g), and (s), Stats. Section 49.145 (2) (g) is a nonfinancial eligibility requirement for Wisconsin Works (W-2) employment positions and job access loans that provides that an individual is eligible in a month only if the individual furnishes the W-2 agency with any relevant information that the W-2 agency determines is necessary, consistent with rules promulgated by the department, within 7 working days after receiving a request for the information from the W-2 agency. The W-2 agency may extend the 7-day time limit for an individual for whom compliance with that limit would be unduly burdensome, as determined by the W-2 agency.

Section 49.155 (1) (ah), Stats., provides that "county department or agency" means a county department under s. 46.215, 46.22, or 46.23, Stats., the unit, as defined in s. 49.825 (1) (e), Stats., or a Wisconsin Works agency, child care resource and referral agency, or other agency.

Section 49.155 (1m) (a) 3m., Stats., provides that an individual may receive a subsidy for child care to participate in a job search or work experience component of the food stamp employment and training program under s. 49.79 (9), Stats.

Section 49.151 (2), Stats., provides that if the department, or a county department or agency under contract under s. 49.155 (1m), Stats., determines that an individual applying for or receiving benefits under ss. 49.141 to 49.161, Stats., for the purpose of establishing or maintaining eligibility for those benefits or for the purpose of increasing the value of those benefits, has committed an intentional program

violation related to any provision in ss. 49.141 to 49.161 or any rule promulgated under those sections, the county department or agency under contract under s. 49.155 (1m), Stats., or the department shall deny benefits under ss. 49.141 to 49.161 to the individual for 6 months for a first intentional program violation, one year for a 2nd intentional program violation, and permanently for a 3rd intentional program violation.

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.

4. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rules

300 hours

5. List with description of all entities that may be affected by the emergency and proposed rules

Low-income families who receive a child care subsidy under s. 49.155, Stats., child care providers who care for children whose care is subsidized under s. 49.155, Stats., and child care administrative agencies.

6. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the emergency and proposed rules

45 CFR 98.41 provides that each state shall assure that children receiving services under the CCDF are age-appropriately immunized based on the latest recommendation for childhood immunizations by the state public health agency. Exemptions are available for all of the following:

- Children who are cared for by relatives (defined as grandparents, great grandparents, siblings (if living in a separate residence), aunts, and uncles).
- Children who receive care in their own homes.
- Children whose parents object to immunization on religious grounds.
- Children whose medical condition contraindicates immunization.

45 CFR 98.21 (a) (1) (ii) provides that a Lead Agency shall re-determine a child's eligibility for child care services no sooner than 12 months following the initial determination or most recent redetermination and during the period of time between determinations or redeterminations of eligibility, a child shall be considered eligible and shall receive services at least at the same level, regardless of a temporary change in the ongoing status of the child's parent as working or attending a job training or educational program. A temporary change shall include, at a minimum, all of the following:

- Any time-limited absence from work for an employed parent due to reasons such as need to care for a family member or an illness.
- Any interruption in work for a seasonal worker who is not working between regular industry work seasons.
- Any student holiday or break for a parent participating in training or education.
- Any reduction in work, training or education hours, as long as the parent is still working or attending training or education.
- Any other cessation of work or attendance at a training or education program that does not exceed three months or a longer period of time established by the Lead Agency.

45 CFR 98.21(a) (2) (i) provides that Lead Agencies have the option, but are not required, to discontinue assistance due to a parent's loss of work or cessation of attendance at a job training or educational program that does not constitute a temporary change in accordance with paragraph (a)(1)(ii) of this section. However, if the Lead Agency exercises this option, it must continue assistance at least at the same level for a period of not less than three months after each such loss or cessation in order for the

parent to engage in job search and resume work, or resume attendance at a job training or educational activity.

7. Anticipated economic impact of implementing the rules (note if the rule is likely to have a significant economic impact on small businesses)

Child care providers will no longer be required to submit attendance report forms to the department and will receive subsidy payments more quickly. Authorizations will need to more accurately reflect when the family needs child care, which may result in a slight increase in workload for child care administrative agencies. Parents will have more responsibility for submitting precise information on times child care is needed and for understanding the payment structure and making appropriate payments.

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