

Statement of Scope

Department of Children and Families

Rule Number: Chapters DCF 52, 54, 56, 57, 59, 152, 201, 202, 250, 251, 252

Relating to: DCF rule suspensions and modifications related to COVID-19

Rule Type: Emergency

This statement of scope was approved by the governor on April 30, 2020.

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

On March 12, 2020, Governor Evers issued Executive Order 72 declaring a public health emergency in Wisconsin in response to the COVID-19 pandemic. COVID-19 continues to endanger the health and safety of Wisconsin residents and cause significant economic disruption throughout the state. The department's emergency rules are necessary to protect the health, safety, and welfare of Wisconsin residents for the following reasons:

- To facilitate the placement and care of children in out-of-home care by allowing flexibility with respect to a limited set of requirements that present challenges due to COVID-19.
- To ensure the availability of appropriate child care for health care workers, necessary employees, and other parents returning to work; to enable continuity of care for children in regulated child care; and to ensure payment of child care subsidies, including subsidies for health care providers under the federal CARES Act.
- To provide relief to child support obligors who through no fault of their own may have lost their employment and are unable to comply with court ordered child support obligations.

2. Detailed description of the objective of the rules

Child Welfare

The department proposes the following changes to the department's child welfare licensing rules:

- Suspending the deadlines for completion of certain initial and ongoing physical and dental examinations for children in foster homes, group homes, and residential care centers and for children accepted for placement by a licensed child-placing agency. (Chapters DCF 52, 54, 56, and 57)
- Suspending limits on the work schedules of resident care workers in residential care centers. (Chapter DCF 52)
- Allowing the department to grant exceptions that authorize an increase in the number of days that a child may be placed in a shelter care facility. (Chapter DCF 59)
- Allowing completion of fingerprint-based criminal background checks to be delayed for foster and adoptive parents and licensees and workers in group homes, residential

care centers, and shelter care facilities if it is not currently feasible to complete them due to the COVID-19 pandemic. Name-based background checks will continue to be required and fingerprint-based criminal background checks will be completed as soon as it is feasible. (Chapters DCF 52, 56, 57, and 59)

Child Care Providers

Child care certification and licensing rules. The department proposes the following changes to the department's child care certification rule and the licensing rules for family child care centers, group child care centers, and day camps (Chapters DCF 202, 250, 251, and 252):

- Suspending limits on the number of hours that a provider may care for children.
- Suspending group size limits and staff ratios for children 5 years of age and older.
- Suspending rules that limit child care programs to the terms of their child care certification or license and allow more flexibility in the hours and days of their operation and the age ranges of the children in care.

Child care licensing rules. The department proposes the following changes to the licensing rules for family child care centers, group child care centers, and day camps (Chapters 250, 251, and 252):

- Allowing licensed child care centers to hire entry-level staff that have not completed all of the entry-level training requirements, but have completed minimal health and safety requirements, such as training in Shaken Baby Syndrome, CPR/AED, and Sudden Infant Death Syndrome.
- Suspending various supervision rules that refer to a "qualified" provider, teacher, or counselor as a person having specified training or qualifications. The rules will require that a person left in sole charge of children be at least 18 years of age and competent and will prohibit the person from consuming or being under the influence of any non-prescription drugs or alcohol.
- Suspending limits on the number of hours that a child may be in care.

Licensed group child care centers and day camps. The department proposes to limit each group child care center and day camp location to a maximum of 50 children and 10 staff present at one time due to COVID-19 limitations on safe interactions. (Chapters DCF 251 and 252)

Child care certification rule. The department proposes the suspension of provisions that require certification agency staff to conduct on-site visits of certified child care providers and applicants for certification. (Chapter DCF 202)

Child Care Subsidy Program

The department proposes to suspend the following requirements under ch. DCF 201, relating to the child care subsidy program:

- Section DCF 201.036 (4), Annual redetermination of eligibility.

- Section DCF 201.037, Parent reporting requirements.
- Section DCF 201.038 (5), which requires a provider and a parent to have a written payment agreement.
- Section DCF 201.039 (2r), Excessive unexplained absences.
- Section DCF 201.039 (11), Backdated authorization start date.
- Section DCF 201.04 (1), General Information on Payments

Child Support Lien Docket

The department proposes to suspend the provisions in ch. DCF 152 that establish a threshold for certifying a child support case for the lien docket. When the department certifies that a person obligated to pay support is eligible for the support lien docket under s. 49.854, Stats., an administrative lien arises by operation of law against the real and personal property in which the person has a recorded ownership interest. Certifying a child support debt for the lien docket and subsequent credit bureau reporting may have an adverse effect on the person's subsequent efforts to comply with their court order to pay support. Suspension of the threshold will prevent new child support debts from being certified to the lien docket.

3. Detailed explanation of statutory authority for the rule

Section 48.651 (1d), Stats., provides that the department shall promulgate rules establishing standards for the certification of child care providers.

Section 48.67 (intro.), Stats., provides that the department shall promulgate rules establishing minimum requirements for the issuance of licenses to, and establishing standards for the operation of, child welfare agencies, including child welfare agencies' operation of residential care centers; child care centers; foster homes; group homes; shelter care facilities; and county departments. Those rules shall be designed to protect and promote the health, safety, and welfare of the children in the care of all licensees.

Section 48.685(9), Stats., provides that the department may promulgate any rules necessary for the administration of this section. The section provides requirements for criminal history and child abuse record searches.

The department administers the child care subsidy program under s. 49.155, Stats. Section 227.11 (2) (a) (intro.), Stats., expressly confers rule-making authority on each agency to promulgate rules interpreting the provisions of any statute enforced or administered by the agency.

Section 49.858 (2) (c), Stats., directs the department to specify the level of support that is overdue before an individual is considered to be delinquent in the payment of support for purposes of the administrative support enforcement.

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

200 hours

5. List with description of all entities that may be affected by the rule

Residential care centers, group homes, foster homes, shelter care facilities, county departments of social and human services, the Division of Milwaukee Child Protective Services, child welfare agencies, licensed child-placing agencies, child care certification agencies, certified child care providers, licensed family child care centers, licensed group child care centers, licensed day camps, families that receive a child care subsidy, child care administrative agencies, child support agencies, families who receive child support enforcement services, and parents who owe child support obligations.

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

Child Welfare

Under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 USC 5121, *et seq.*, (Stafford Act), federal agencies that administer federal assistance programs may modify or waive administrative conditions of federal assistance programs under certain limited circumstances:

- There has been a declaration of a major disaster with respect to the applicable geographic area.
- The applicant state or local authorities have requested the modification or waiver.
- The modifications or waivers are with respect to administrative conditions for assistance as would otherwise prevent the giving of assistance under such programs if the inability to meet such conditions is a result of the major disaster (42 USC 5141).

The U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau, has identified the prohibition on Title IV-E federal financial participation if a fingerprint-based background check of a child welfare provider has not been completed as an administrative condition that it may modify under the Stafford Act authority, and it has chosen to exercise that authority. The Department of Children and Families is the Title IV-E agency for the state of Wisconsin. Thus, during the major disaster period, a Title IV-E agency that wishes to exercise this flexibility must do the following:

- Conduct all available name-based criminal background checks for prospective foster parents, adoptive parents, legal guardians, and adults working in a group home, shelter care facility, or residential care center.
- Complete the fingerprint-based checks of National Crime Information Database under 42 USC 671 (a)(20) (A), (C), and (D) as soon as it can safely do so, in situations where only name-based checks were completed.

Child Support

45 CFR 302.70 (a) (4) requires states to have procedures for the imposition of liens against the real and personal property of noncustodial parents who owe overdue support.

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

Minimal impact

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