

State of Wisconsin
Department of Children and Families
Child Care Subsidy Program Integrity

Chapter DCF 201

Emergency Rule

The Wisconsin Department of Children and Families orders the amendment of s. DCF 201.06 (3) (c) 2.; and the creation of ss. DCF 201.02 (9), 201.038 (5) to (8), 201.04 (1), (3), (4), and (5) (b) 5., relating to child care subsidy program integrity.

This emergency rule was approved by the governor on December 20, 2017.

The statement of scope for this rule, SS 079-17, was approved by the governor on August 6, 2017, published in Register 740A3, on August 21, 2017, and approved by Secretary Eloise Anderson on September 7, 2017.

Finding of Emergency

An emergency rule is necessary to protect child care subsidy funds from fraud and misuse.

Analysis Prepared by the Department of Children and Families

Statutory authority: Sections 49.151 (2), 49.155 (7m), and 227.11 (2) (a), Stats.

Statutes interpreted: Sections 49.151 (2), 49.155, and 49.83, Stats.

Related statutes and rules: Sections 48.65 and 48.651, Stats.

Explanation of Agency Authority

The department administers the child care subsidy program under s. 49.155, Stats. Section 49.155 (7m), Stats., provides that the department shall by rule establish policies and procedures permitting the department to do all of the following if a child care provider submits false, misleading, or irregular information to the department or if a child care provider fails to comply with the terms of the program under this section and fails to provide to the satisfaction of the department an explanation for the noncompliance:

1. Recoup payments made to the child care provider.
2. Withhold payments to be made to the child care provider.
3. Impose a forfeiture on the child care provider.

Section 49.151 (2), Stats., provides that if a child care administrative agency determines that an individual applying for or receiving benefits under s. 49.155, 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 s. 49.155, Stats., or a rule promulgated under this section, the child care administrative agency shall deny benefits to the individual as follows:

1. For a first intentional program violation, for 6 months.

2. For a 2nd intentional program violation, for one year.
3. For a 3rd intentional program violation, permanently.

Section 49.83, Stats., provides that no person may use or disclose information concerning applicants and recipients of Wisconsin Works under ss. 49.141 to 49.161, Stats., for any purpose not connected with administration of the program.

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 rule will update the department's child care subsidy rules to address program integrity concerns with the department's new system for issuing subsidy payments directly to parents.

The rule requires a provider to enter into a written payment agreement with each parent that receives a subsidy for child care by the provider. The agreement shall include the provider's monthly or weekly child care price; the provider's days and hours of operation; any discounts or scholarships that are available to parents, and any discounts or scholarships that the parent is receiving; the parent's payment schedule; the provider's anticipated closure dates; payment expectations for the child's anticipated and unanticipated absences and the provider's closure dates; parent procedures for termination of a child's enrollment; and provider procedures for termination of a child's enrollment.

The provider is required to keep a copy of a current agreement at the location where child care is provided. An expired written payment agreement must be kept for at least 3 years after the child's last day of attendance at a location where it can be made available to the department within 24 hours.

Under the rule, a provider may not charge a parent that receives a subsidy a higher child care price than a private pay parent is charged for a similar amount of child care, unless the difference is due to the children being in different age ranges or a child's special needs.

A provider may not require a parent to disclose the balance in the parent's subsidy account; require a parent to provide the parent's EBT card, account number, or personal identification number to the provider; possess a photocopy, photo, or other image of a parent's EBT card; or possess a parent's account number or personal identification number.

A child care provider is required to notify the local child care administrative agency if the child of a parent who receives a subsidy for child care has not attended within the previous 30 days. The department may terminate a parent's authorization and retract all subsidy funds in the parent's subsidy account if the parent has not paid any of the subsidy funds to the provider within the previous 90 days.

The rule specifies that parent's attempt to sell access to the parent's subsidy account to an unauthorized person will be considered an intentional program violation under s. 49.151 (2), Stats.

The rule also specifies that a provider is responsible for an overpayment if the provider misrepresented information that resulted in the provider receiving a higher star rating and a higher maximum rate than the provider was eligible to receive under the child care quality rating system in ss. 48.659 and 49.155 (6) (e), Stats.

Related Rule on Payments under the Child Care Subsidy Program

This rule is related to the emergency rule, EmR1709, and the proposed permanent rule CR 17-033, which implements policies for issuing child care subsidy payments to parents instead of providers. EmR1709 became effective on 5/4/2017. The corresponding proposed permanent rule, CR 17-033, is expected to be effective on 2/1/2018.

Emergency rules, proposed permanent rules, and the current *Administrative Code* are available at <https://docs.legis.wisconsin.gov/code>. Until 2/1/2018, the proposed rule on payments under the child care subsidy program is available under “Active Clearinghouse Rules” as CR 17-033. Effective 2/1/2018, the changes in the proposed CR 17-033 will be incorporated into ch. DCF 201 of the *Administrative Code*.

Summary of Factual Data and Analytical Methodologies

With the department’s new payment system, providers are no longer involved in administration of the child care subsidy program and cannot require parents to release confidential information related to the subsidy program.

Summary of Related Federal Law

42 USC 9858c (c) (2) (S) requires that the payment practices of child care providers that serve children who receive assistance reflect generally accepted payment practices of child care providers that serve children who do not receive assistance, so as to provide stability of funding and encourage more child care providers to serve children who receive assistance.

A State Plan shall include a description of how the Lead Agency will prevent, reduce, and collect improper payments, including a process to investigate and recover fraudulent payments and to impose sanctions on clients or providers in response to fraud.

Lead Agencies must have systems in place to document that CCDF funds are spent in compliance with the law and the approved plan. Expenditures not made in accordance with the Child Care Development Block Grant Act, implementing regulations, or the approved CCDF Plan are subject to disallowance, pursuant to 45 CFR 98.66(a).

Lead agencies must ensure that child care providers receive payment for any services in accordance with a written payment agreement or authorization for services that includes, at a minimum, information regarding provider payment polices, including rates, schedules, any fees charged to the providers, and dispute resolution process.

Comparison to Adjacent States

The proposed rule address program integrity issues related to the issuance of child care subsidy payments to parents for transfer to child care providers. None of the adjacent states issue subsidy payments in this manner.

Effect on Small Businesses

The proposed 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 rule requires a provider to have a written agreement with each parent who receives a subsidy for child care by the provider. The agreement is required to include the basic terms of the business arrangement.

Many providers already have similar agreements with parents. For providers that do not already have an agreement, the department is providing a template. No professional skills are required.

Agency Contact

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Place Where Comments are to be Submitted and Deadline for Submission

Comments may be submitted to Elaine Pridgen, Office of the Secretary, Department of Children and Families, 201 E. Washington Avenue, P.O. Box 8916, Madison, WI, 53708-8916 or dcfpublichearing@wisconsin.gov. The comment deadline is January 26, 2018.

SECTION 1. DCF 201.02 (9) is created to read:

DCF 201.02 (9) “EBT card” means a card that contains an account number that allows a parent to electronically access the parent’s child care subsidy and transfer subsidy funds to the parent’s child care provider as payment for child care services.

Note: The EBT card is used to make the payment if the provider has a point-of-sale device. The account number is used for online payment or payment over the telephone.

SECTION 2. DCF 201.038 (5) to (8) are created to read:

DCF 201.038 (5) WRITTEN PAYMENT AGREEMENT. (a) A provider shall enter into a written payment agreement with each parent that receives a subsidy for child care by the provider.

(b) The written payment agreement between a provider and parent shall include all of the following:

1. The provider’s monthly or weekly child care price.
2. The provider’s days and hours of operation.
3. Any discounts or scholarships that are available to parents, and any discounts or scholarships that the parent is receiving.
4. The parent’s payment schedule.
5. The provider’s anticipated closure dates.
6. Payment expectations for the child’s anticipated and unanticipated absences and the provider’s closure dates.
7. Parent procedures for termination of a child’s enrollment.
8. Provider procedures for termination of a child’s enrollment.

(c) A provider shall retain a copy of each current written payment agreement at the location where child care is provided.

(d) A provider shall retain a copy of an expired written payment agreement for at least 3 years after the child last day of attendance. The agreement shall be kept at a location where it can be made available to the department within 24 hours.

Note: DCF-F-5224, *Provider/Parent Child Care Payment Agreement*, is a voluntary form that a provider may use to comply with this subsection.

(6) NONDISCRIMINATION. A provider may not charge a parent that receives a subsidy a higher child care price than a private pay parent is charged for a similar amount of child care, unless the difference is solely due to the children being in different age ranges under s. DCF 201.06 (1) (b) or a child’s special needs under s. DCF 201.06 (8).

(7) CONFIDENTIALITY. A provider may not do any of the following:

(a) Require a parent to disclose the balance in the parent's subsidy account.

(b) Require a parent to provide the parent's EBT card, account number, or personal identification number to the provider.

(c) Possess a photocopy, photo, or other image of a parent's EBT card.

(d) Possess a parent's account number or personal identification number.

(8) INACTIVEFAMILY. A child care provider shall notify the local child care administrative agency if the child of a parent who receives a subsidy for child care has not attended within the previous 30 days.

SECTION 3. DCF 201.04 (1), (3), (4), and (5) (b) 5. are created to read:

DCF 201.04 (1) GENERAL. The subsidy funds in a parent's account may only be used to compensate a provider that is in compliance with s. DCF 201.038 (1) for child care authorized under s. DCF 201.039 for the child of a parent eligible under s. 49.155 (1m), Stats., and provided within the terms of the provider's regulation and the parent's authorization.

(3) INACTIVEACCOUNT. The department may terminate a parent's authorization and retract all subsidy funds in the parent's subsidy account if the parent has not paid any of the subsidy funds to the provider within the previous 90 days.

(4) INTENTIONALPROGRAM VIOLATION. A child care administrative agency shall consider a parent's attempt to sell access to the parent's subsidy account to an unauthorized person to be an intentional program violation under s. 49.151 (2), Stats.

(5) (b) 5. A provider misrepresented information that resulted in the provider receiving a higher star rating and a higher maximum rate than the provider was eligible to receive under the child care quality rating system in ss. 48.659 and 49.155 (6) (e), Stats.

SECTION 4. DCF 201.06 (3) (c) 2., as created by CR 17-033, is amended to read:

DCF 201.06 (3) (c) 2. The center or day camp has not established full-time, weekly, or full-time, monthly child care prices.

SECTION 5. EFFECTIVE DATE. This rule shall take effect 60 days after the date of publication as provided in s. 227.24 (1) (c), Stats.