

**Department of Workforce Development  
Division of Family Supports  
EMERGENCY RULE  
Repeal of Child Care Enrollment Underutilization**

The Wisconsin Department of Workforce Development orders the repeal of EmR0807, the emergency rule affecting DWD 56.04 that was effective March 30, 2008, relating to child care enrollment underutilization.

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**Finding of Emergency**

The Department of Workforce Development finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is:

The Department implemented the child care enrollment underutilization emergency rule as a cost-saving measure effective March 30, 2008. 2007 Wisconsin Act 226 provides \$18.6 million to address the fiscal year 2007-08 Wisconsin Shares funding shortfall. The Governor's veto message directs the Department of Workforce Development to "suspend the current attendance-based rule for the remainder of fiscal year 2007-08." The Department is repealing the enrollment underutilization emergency rule and will be withdrawing the corresponding proposed permanent rule.

**Analysis Prepared by the Department of Workforce Development**

**Statutory authority:** Sections 49.155 and 227.11 (2) (a), Stats.

**Statutes interpreted:** Section 49.155, Stats.

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

**Explanation of agency authority.** The Department administers the child care subsidy program under s. 49.155, Stats., and reimburses child care providers for services provided pursuant to s. 49.155 (3m), Stats.

**Summary of the emergency rule.** This rule repeals the emergency rule on child care enrollment underutilization that was effective March 30, 2008.

The child care enrollment underutilization rule attempted to control costs by reducing payments to licensed child care providers for authorized child care services that were significantly underused. The rule provided that for any week in which a child whose authorized payments were on an enrollment basis attended less than 50% of the authorized hours of care, payment was made on the basis of actual hours of attendance used, unless the agency determined that the absence was for a reason approved by the Department, such as short-term illness of the child or death in the family. The rule also increased the penalties for a provider who submitted false or inaccurate attendance reports.

2007 Wisconsin Act 226 provides \$18.6 million to address the fiscal year 2007-08 Wisconsin Shares funding shortfall. The enrolled budget repair bill contains language that would have prohibited the use of a child care underutilization methodology in virtually any situation. The Governor vetoed this language. The Governor's veto message directs the Department of Workforce Development to suspend the current attendance-based rule for the remainder of fiscal year 2007-08 since Act 226 provides funding to address the shortfall. The Department is repealing the enrollment underutilization emergency rule and will be withdrawing the corresponding proposed permanent rule.

When the Wisconsin Shares program is transferred to the new Department of Children and Families effective July 1, the new department will retain the authority to implement a child care enrollment underutilization rule, given the possibility of a future funding shortfall.

**Summary of factual data and analytical methodologies.** The Department is repealing the child care enrollment underutilization rule in response to funding provided in 2007 Wisconsin Act 226 and the Governor's veto message.

**Summary of related federal regulations.** There are no applicable federal regulations.

**Comparison with rules in adjacent states.** Michigan. A provider may only receive payment for a child's hours of attendance, except for absences due to the child's illness, not to exceed 2 consecutive weeks, and state holidays.

Illinois. Payment to licensed and license-exempt child care centers are based on authorized days if the total of days attended for all publicly-funded children at the center location are 80% of the authorized days for the month.

Payment to licensed home providers are based on authorized days if the total of days attended for all children in a family are 80% of the family's authorized days for the month.

Payment to license-exempt home providers are based only on attendance.

Iowa. Payment is based on authorized days with payment allowed for a child not in attendance not to exceed 4 days per calendar month.

Minnesota. Payment is based on authorized days except child care providers may not be reimbursed for more than 25 full-day absent days per child, excluding holidays, in a fiscal year, or for more than 10 consecutive full-day absent days, unless the child has a documented medical condition that causes more frequent absences.

**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 as defined in s. 227.114 (1), Stats.

**Analysis used to determine effect on small businesses.** This rule repeals the child care enrollment underutilization rule based on funding provided in 2007 Wisconsin Act 226 and direction in the Governor's veto message.

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**SECTION 1.** EmR0807, the emergency rule affecting DWD 56.04 that was effective March 30, 2008, relating to child care enrollment underutilization, is repealed.

**SECTION 2. EFFECTIVE DATE.** This rule shall take effect upon publication as provided in s. 227.24 (1) (c), Stats.