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TO: **Income Maintenance Supervisors**
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W-2 Agencies
Workforce Development Boards
Job Center Leads and Managers
Training Staff
Child Care Coordinators

FROM: Laura Saterfield
Child Care Section
Bureau of Workforce Information
Division of Family Supports

DWS OPERATIONS MEMO

No: 07-28

DATE: 06-21-07

FS	<input type="checkbox"/>	MA	<input type="checkbox"/>	SC	<input type="checkbox"/>
CTS	<input type="checkbox"/>	CC	<input checked="" type="checkbox"/>	W-2	<input checked="" type="checkbox"/>
FSET	<input type="checkbox"/>	EA	<input type="checkbox"/>	CF	<input type="checkbox"/>
JAL	<input type="checkbox"/>	JC	<input type="checkbox"/>	RAP	<input type="checkbox"/>
WIA	<input type="checkbox"/>	Other	EP	<input type="checkbox"/>	★

PRIORITY: HIGH

SUBJECT: Clarification of Holding a Slot for a Child and Information on Child Care Emergency Rules.

CROSS REFERENCE: Operations Memos 06-16 and 07-15
Child Care Manual, Chapter 3, sections 1.2.1, 2.4.0, and 2.9.0
DWD 56

EFFECTIVE DATE: Immediately

PURPOSE

The purpose of this memo is to inform W-2 and Child Care Subsidy Administrative Agencies about clarifications of the policies regarding holding a slot for a child, approved absences when a slot is under-utilized, and to inform the agencies about recent DWD 56 emergency rules.

BACKGROUND

On 4/1/07, the department implemented a new attendance policy that changes the payment for enrollment-based authorizations to hourly attendance when the child is attending less than 50% of the amount authorized in a given week. The department recognizes there is a need to clarify policy about holding a slot for a child. There has also been some confusion on when weekly payments can be approved, even if the slot is not utilized at 50%.

The department published emergency rules on January 22 and April 1, 2007 authorizing the cost savings measures implemented between January 1st and April 1st, 2007. This memo will explain those rules in more detail.

HOLDING A SLOT

The administrative rule for holding a slot is listed in DWD 56.04(2)(h). The rule reads “The child care administrative agency may authorize payment to a licensed or certified provider to hold a slot for a child if the parent has a temporary break in employment and intends to return to work and continue to use the child care provider upon return to work. The agency may authorize payment for no more than 6 weeks if the absence is due to a medical reason and is documented by a physician or for no more than 4 weeks if the absence is for other reasons. The department and child care administrative agency may not consider payment for a temporary absence to be an overpayment if the parent intended to return to work but does not actually return.”

When Wisconsin Shares was designed in the late 90's, there were concerns of the possibility of a lack of regulated slots being available for an increasing number of subsidized children. The intent of DWD 56 is to assure continuity of care for the child after the break. The rule language leaves it to the county/tribe's discretion whether holding the slot is justified or not. This means that each agency may decide either to approve to hold a slot, negotiate a partial payment, or deny the request to pay for the slot on a case-by-case basis. The county/tribe is encouraged to negotiate with the provider in each specific situation. If there is a large surplus of child care slots in a center for a certain age group (usually preschool age children), there might not be a risk that the child will lose the slot after the break.

SITUATIONS FOR HOLDING A SLOT

Below are the reasons a local agency may hold a slot:

Situations when a slot can be held and payments made	
Situation	Maximum Number of Weeks Of Leave
1.Parent is temporarily laid off but will be returning to work within 4 weeks.	4 weeks
2.Parent has a temporary break in employment but the parent will be returning to an approved activity within 4 weeks. Note:This excludes when a parent loses employment and is seeking new employment	4 weeks
3.Parent is on medical leave from employment but will be returning to work within 6 weeks.	6 weeks with documentation from a physician
4.Family is on vacation but will be returning within two weeks.	2 weeks per year
5.Child is ill but will be returning to day care within 6 weeks.	6 weeks with documentation from a physician

Note: 06-16 Operations Memo listed a reason to hold a slot when a parent begins an approved activity within 2 weeks but must pay the provider in order to hold the slot until the activity begin date. This reason has been eliminated and is no longer a valid reason.

DEFINITIONS

DWD 56 defines “temporary” as no more than six weeks for a medical need and four weeks for other reasons, and “a break in employment” refers to a parent/guardian who is working and will be returning to the same employer. Self employment is not included in this definition. Examples of ‘break in employment’ are, but not limited to:

- Temporary layoff with or without pay
- Employer-approved absence such as vacation, medical leave, etc.

CLARIFICATIONS OF HOLDING THE SLOT POLICY

The following conditions must be met before a slot can be held and payments made to a provider:

1. The authorization must be on an enrollment basis.

A slot cannot be held if the child is authorized on attendance basis because the provider must always report accurate number of hours and if zero hours are reported, the system will not pay the provider.

2. The parent must be both receiving Wisconsin Shares and also be employed prior to the leave.**Example:**

Kathy and John have a 2-year-old child. John works 3rd shift and Kathy 1st shift. They have not needed child care because of the alternating work schedules. Kathy needs medical leave and cannot care for her child while recuperating. She applies for child care. The county/tribe cannot approve to hold the slot in this case because the parent was not receiving Wisconsin Shares child care subsidy prior to the leave.

3. The parent must intend to return to work to the same employer immediately after the leave.

If the leave is longer than what the subsidy can pay, the slot cannot be held.

Examples:

A: Mary needs surgery and according to her physician, she needs 3 weeks to recover from the surgery and cannot work during the recovery time. The county may pay the provider to hold the slot if there is a risk that the child(ren) will lose the slot.

B: Lisa is due to have a 2nd child. She wants to stay home 10 weeks after the child birth. DWD 56 allows payment up to 6 weeks during a maternity leave. According to the rule, the parent must have intent to return to the employment immediately after the leave. Since Lisa does not plan to return to work within the 6 weeks, the agency would not pay the provider to hold the slot.

4. After the leave, the parent must return to the same employer.

The job/tasks may change, but the employer must be the same. The intent to return to the same employer must be reasonably accurate at the time approval to hold the slot was

granted. The local agency may ask for a statement from the employer verifying that the parent will have employment after the leave.

Examples:

A: Laura is employed by a school district. She is on unpaid leave during Christmas break. She will have the same job once the school resumes after the holiday. The subsidy may pay to hold the slot because she will be returning to the same employer.

B: Bill resigned from his job but plans on taking 2 weeks vacation before he starts a new job for a different employer. The subsidy cannot pay to hold the slot in this case, because the employer will not be the same after the break and slots are not held when employment ends.

5. The provider must be the same before and after the leave.**Example:**

A: Karen will take 6 weeks maternity leave. She asks her worker if the subsidy can hold the slot for her 2-year old while she is on maternity leave. After the leave, Karen will continue with the same employer, however, her current provider does not accept infants so Karen plans on enrolling her 2-year old and the new baby with another provider. The subsidy would not pay in this case because the 2-year-old is not returning to the same provider.

CONSECUTIVE LEAVES

The local agency may not approve multiple, consecutive leaves unless the parent has returned to work at least for one week after the leave ends before the 2nd leave can start. In these cases, the child must attend care at least 50% of that week.

Examples:

A: Ellen is pregnant and due with her baby in 6 weeks. Her doctor orders bed rest. Ellen requests her worker to hold the slot for her 3-year-old son during her medical leave. After the bed rest, Ellen requests an additional 6 week maternity leave to begin immediately after the bed rest leave. The local agency may not approve to hold the slot because it is a continuation of the leave and exceeds the six week time limit.

B: Jim is temporarily laid off from his work as a construction worker. Jim brings in a statement from his employer to his worker verifying that he will have employment after 4 weeks. Week 3 into his break in employment, Jim has an accident and breaks his leg. According to the doctor, it will take about 6 weeks for the leg to heal. In this case, the local agency would stop paying the provider after 3 weeks because the parent does not intend to return to work immediately after the leave. The agency would also refuse to pay for the slot during Jim's medical leave because it following right after the temporary layoff.

C: Sue is laid off from her employer for the month of December. The county agrees to hold the slot for 4 weeks for Sue's infant. On December 15th, she gets a notice from her employer that the layoff will be extended through January. The local agency would have to stop payments to the child care provider effective December 15th, because the temporary break in employment will be more than 4 weeks and the parent does not intend to return to work immediately after the leave.

ATTENDANCE WHILE HOLDING THE SLOT

If the local agency is unable to negotiate a lower rate and agrees to pay full payment during any of the situations above, the provider must let the child attend care. Typical examples of these cases would be maternity or parent medical leaves.

APPROVED ABSENCES FOR PAYMENT WHEN A SLOT IS UNDER-UTILIZED

Operations Memo 07-15 listed the following approved absence reasons when a full payment can be paid for children who are authorized on enrollment basis:

- Temporary Layoff
- Break in approved activity
- Parent medical leave
- Child Medical Leave
- Family vacation

The department has added two more valid reasons when a full weekly payment may be issued even if attendance is less than 50%. Those reasons are:

- Provider vacation (up to 1 week/year)
Providers may claim individual days, not to exceed five days (one business week) within the calendar year. Agencies are encouraged to monitor approved absences to ensure that provider vacations claims are not abused.
- Death in the family

EMERGENCY RULES

Emergency rules are temporary administrative rules that expire after 180 day after the publication date unless the rule is extended by the Joint Committee of Review of the Administrative Rules, or a permanent rule has been approved.

Freezing Reimbursement Rates

On January 22, the Department published emergency Administrative Rules freezing county maximum rates at the level established for 2006. Without these rules, rates would have increased despite an estimated \$46 million deficit in the subsidy. The emergency rule is identified as "DWD 56, Child Care Rates" and can be viewed at <https://apps4.dhfs.state.wi.us/admrules/public/Rmo?nRmold=1903>. The Joint Committee of Review of the Admin Rules extended the emergency rule through August 2007. The Department anticipates that action in the state budget will determine how long the freeze remains in effect. These rules are not expected to change local agency procedures in any way.

Under Utilization Policy

On April 1, the Department published emergency Administrative Rules to codify the Under Utilization policy articulated in Operations Memo 07-15 and this memo. In addition to describing the Under Utilization policy, the emergency rules remove the preference for enrollment-based authorization and address over-reporting of attendance by increasing penalties. These rules can be viewed at <https://apps4.dhfs.state.wi.us/admrules/public/Rmo?nRmold=2104>.

Enrollment versus attendance based authorizations. Agencies are directed to pay special attention to the changes related to authorizing on an attendance basis versus enrollment basis. Under the emergency rules, the child care administrative agency creating authorizations for a child to licensed care should authorize:

- On an enrollment basis if the need for care is approximately the same number of hours each week.
- On an attendance basis if the care will vary from week to week or if the child has a history of variable attendance.
- On an attendance basis if the provider has a history over-reporting attendance.

This varies from previous law. Under previous law, authorizations to licensed care were to be on an enrollment basis unless the weekly attendance was expected to vary widely or the provider had a history of over-reporting attendance. With the change, agencies should simply view the child's needs and the child's history of using care and make the decision as to which authorization type is more appropriate. If the provider has a history of over-reporting attendance, the agency should continue to use attendance-based authorizations which give the agency an increased ability to monitor attendance and recover overpayments.

Example:

3-year old Johnny's mother works 30 hours per week, spread across 5 days, at a local grocery store and needs half an hour each way for transportation from child care to work. This is a new client with no history and the family does not indicate any special issues. The authorization should be for 35 hours per week on an enrollment basis.

Example:

3-year old Johnny's mother works 30 hours per week, spread across 5 days, at a local grocery store and needs half an each way for transportation from child care to work. This is a re-authorization and Johnny has a history of missing at least one day per week at child care. Johnny's mother explains that he likes to spend time with his grandmother. In light of this history, the authorization should be for up to 35 hours per week on an attendance basis.

See Section DWD 56.04(2)(d) at the web site listed above.

Enforcement. Under previous law, a local administrative agency can revoke all Wisconsin Shares authorizations to a provider or refuse to issue new authorizations to a provider or both for up to 6 months if a provider refuses to provide accurate daily attendance records and other records to the Department upon request. The agency may also revoke all existing authorizations and withhold payment to the provider until the provider has corrected the violation.

Under the emergency rules published April 1, 2007, these penalties are increased. In addition to revoking existing authorizations, the agency may refuse to issue new authorizations to a provider:

- For up to 6 months if it is the provider's first documented instance of submitting an inaccurate report and the overpayment that resulted or would have resulted from the inaccurate report was less than \$1,000.
- For up to 1 year if it is the provider's second documented instance of submitting an inaccurate attendance report **or** the overpayment that resulted or would have resulted was \$1,000 or more.
- For up to 5 years if it is the provider's third or subsequent documented instance of submitting an inaccurate attendance report **or** the overpayment that resulted or would have resulted was \$5,000 or more.

These sanctions are available for you to use if the provider refuses or fails to give you the daily attendance documentation that they are required to make available to you upon request under DWD.56.04(6). They are also available to you if the provider over-reports attendance on CCPI or a paper Attendance Reporting Form (ARF). The time limits for refusing new authorizations provide flexibility, so local administrative agencies can make decisions about applying the sanctions, but should have reasons for choosing different lengths of time.

When revoking authorizations under this rule, the agency should provide a 10-day notice to the parents.

Example:

The local administrative agency makes an unannounced site visit to XYZ Child Care Center, where 15 subsidized children are enrolled. It is 3:00 in the afternoon, there is one subsidized child in the center. Another 14 were signed in at 7:00 in the morning and are already signed out for 4:30 in the afternoon. Upon comparing XYZ's daily attendance records with attendance reported on CCPI for the previous 10 weeks, the agency finds that XYZ has reported more than 150 extra hours of attendance per week over the past 10 weeks, at a cost of \$650 per week or \$6500. The agency elects to revoke authorizations and refuse new authorizations for 1 year. The agency's reason for using the one year rather than the 5 available is that this is a new provider who has just taken over the center, and there were no previous findings. A 10-day notice is sent to parents. The agency begins a broader review of the provider for the purpose of defining the amount of overpayment to be recovered and whether or not fraud charges should be pursued.

Example:

The local administrative agency makes an unannounced site visit to ABC 3rd Shift Family Child Care Center, at 3:00 in the morning. They are there because they have been informed that no care is occurring at this licensed family child care center. Previously, the provider had had an overpayment recouped because a parent had proved that children claimed to be in care were not. At the 3:00 a.m. visit, the agency finds an adult party in progress and no children in care. Two weeks later, the owner of ABC 3rd Shift Family Child Care Center submits a paper Attendance Reporting Form that shows 8 children in care the night of the site visit. While the amount of money for the evening in question is relatively small (\$500), this is the second incident of false reporting and it is likely that additional episodes of over-reporting care have occurred. The agency elects to revoke authorizations and refuse new authorizations for the maximum 1 year. The agency begins a broader review of the provider for the purpose of defining the amount of overpayment to be recovered and whether or not fraud charges should be pursued.

Example:

The local administrative agency makes an unannounced site visit to LMNOP Child Care Center and requests to see the required attendance documents. The center director indicates that, contrary to DHFS 45, DHFS 46, or DWD 55, and DWD 56.04(6), the records are not on hand. The agency directs the Center to have the records available on-site within 12 hours. The center does not comply and does not return phone calls. The agency requests that DWD hold payments to the provider until the required records are provided and notifies the provider that there will be no new authorizations to the center for the next 3 months.

Agencies are urged to use these tools as needed, but to be reasonable and consistent in selecting the severity of a sanction.

Permanent Rule-making

Emergency rules are temporary administrative law that must go through public hearings and legislative approval before they become permanent.

The rate-freeze rule is in the process of permanent rule-making. The Department anticipates that the permanent rule, which is precisely the same as the emergency rule, will be in effect at least until the biennial budget is enacted. The budget may provide additional direction to the Department in managing this program.

The Under Utilization rule will enter the permanent rule-making process shortly.

CONTACTS

BEM CARES Information & Problem Resolution Center

★Program Categories – FS – FoodShare, MA – Medicaid, SC – Senior Care, CTS – Caretaker Supplement, CC – Child Care, W-2 – Wisconsin Works, FSET – Food Stamp Employment and Training, CF – Children First, EA – Emergency Assistance, JAL – Job Access Loan, JC - Job Center Programs, RAP – Refugee Assistance Program, WIA – Workforce Investment Act, Other EP – Other Employment Programs.

DWD/DWS/BWI/CCS/pz