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State of Wisconsin  
Governor Scott Walker

TO: **Income Maintenance Supervisors  
Income Maintenance Lead Workers  
Income Maintenance Staff  
Training Staff  
Child Care Coordinators**

FROM: Tiffany Wilson, Bureau Director  
Bureau of Program Integrity  
Division of Early Care and Education  
Department of Children and Families

<b>DECE/BPI OPERATIONS MEMO</b>					
No:		<b>16-07 Amended</b>			
DATE:		<b>05/13/2016</b>			
FS	<input type="checkbox"/>	MA	<input type="checkbox"/>	BC+	<input type="checkbox"/>
SC	<input type="checkbox"/>	CTS	<input type="checkbox"/>	FSET	<input type="checkbox"/>
BC+ Basic	<input type="checkbox"/>	BC+ CORE	<input type="checkbox"/>		
CC	<input checked="" type="checkbox"/>	W-2	<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	<input type="checkbox"/> *
EP					

**SUBJECT: Enforcing the 40% Rule for Children of Child Care Provider Employees**

**CROSS REFERENCE:** Child Care Manual Chapter 4.3 and Operations Memo 10-69

**EFFECTIVE DATE:** May 13, 2016

**PURPOSE**

The purpose of this memo is to provide an updated contact email for BPI when an out of compliance provider is being reported, and to provide guidance concerning the frequency of investigations for out of compliance providers.

**BACKGROUND**

Operations Memo 10-69 introduced Wisconsin Act 28 and intended to provide instruction on how to determine whether a provider is out of compliance with this rule and explain the procedure for enforcing the rule.

Wisconsin Act 28 created new statutory language [s. 49.155(3m)(e)] which instructs the Department and local agencies that Wisconsin Shares reimbursements should not be paid on behalf of children of employees of the provider if more than 40% of all children enrolled by the provider are children of employees of the provider. The new law also states that when the Department or local agency finds that a provider is in violation of this rule, the provider should be given a six-week notice prior to ending payments for those children. This allows the provider an opportunity to come into compliance with the law.

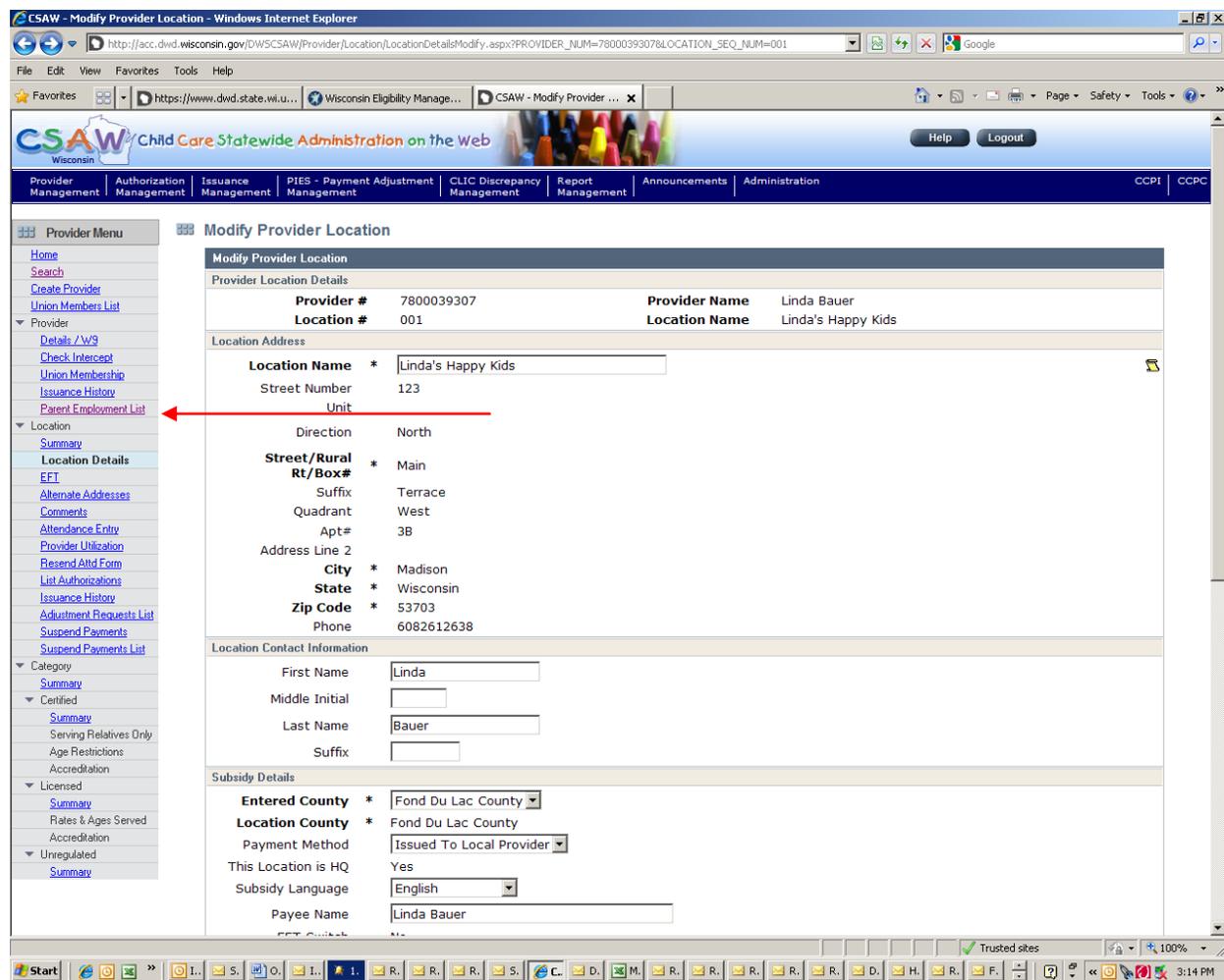
### CERTIFIED PROVIDERS

The new s.49.155(3m)(e) only allows the payment of child care subsidies on behalf of parents who are employed by the provider if the provider is licensed under s. 48.65. Thus, children of parents who are employed by certified providers are not eligible for an authorization at a certified provider. If a parent's approved activity is verified to be employment with a certified child care provider, the child may **not** be authorized at that provider.

### DETERMINING COMPLIANCE WHEN ENTERING AUTHORIZATIONS

When a parent requests an authorization for his or her child and the parent is employed by the licensed child care provider where the parent wants the authorization, the worker needs to determine if the provider is in compliance with the 40% rule or if entering the requested authorization will put the provider out of compliance with the 40% rule.

To find out if the provider is at or near the 40% threshold, go to the Parent Employment List screen in CSAW:



The report will list all parents who have children authorized at the provider, their employer as it appears in Cares Worker Web, and the number of children they have authorized at the provider. At the top of the report is a summary showing the number of children authorized at the provider, the number of parents listed as employees of the provider, and the estimated percentage of children whose parents work for the provider. If this percentage is 40% or higher, the worker should further investigate whether more than 40% of *all children* – including

private pay children – enrolled at the facility are children of employees. If so, the worker should not issue new authorizations for any additional employee children.

Please note that the Parent Employment List screen is an estimate of children of provider employees. In order to take enforcement action (e.g., end existing authorizations) against a provider for non-compliance with the 40% rule, the worker should use the monthly Parent Employment Summary reports referenced later in this memo.

### ***DETERMINING A PROVIDER TO BE NONCOMPLIANT WITH THE 40% RULE***

DCF has developed Parent Employment Summary reports in CSAW that show any provider in a given month that is in violation of the 40% rule. These reports are located in the **Report Management** section of the CSAW homepage:

The screenshot shows the CSAW Home page with the following sections:

- Welcome to CSAW!**
- Provider Management**
  - New Provider - Create a new provider
  - Existing Provider - Work with an existing provider
  - Union Member List - Show provider union membership details
- Authorization Management**
  - New Authorization - Create a new authorization
  - Existing Authorization For Case - Work with an existing authorization for a case
  - Existing Authorization For Provider - Work with an existing authorization for a provider location
  - End/Delete authorizations - End/Delete authorizations for a case
  - School bank hours - Setup school age child and view details of School bank hours.
  - Education Tracking - Track parent education in a Child Care case.
- Issuance Management**
  - Case Search - Search for issuance by case
  - Provider Search - Search for issuance by provider
- Union Dues**
  - Union Dues Remittances - List of union dues remittances
  - Unremitted Union Dues - List of unremitted union dues
- PIES - Payment Adjustment Management**
  - Client Payment Adjustment Requests - Manage client payment adjustment requests.
  - Client Payment Adjustments - View/Confirm client payment adjustments.
  - Provider Payment Adjustment Requests - Manage provider payment adjustment requests.
  - Provider Payment Adjustments - View/Confirm provider payment adjustments.
- CLIC Discrepancy Management**
  - CLIC Data Review - Review CLIC Data
  - Name Discrepancies - View name discrepancies that occurred during the CLIC transfer process.
  - Location Discrepancies - View location-level discrepancies that occurred during the CLIC transfer process.
  - Duplicate Providers - View Duplicate Provider discrepancies that occurred during the CLIC transfer process.
  - Other Discrepancies - View Other Provider discrepancies that occurred during the CLIC transfer process.
- Report Management**
  - New Provider Locations - Report of new providers created in the last 30 days.
  - Closed Category - Report of providers whose category has been ended within the last 90 days or will end within the next 30 days.
  - Inactive Category - Report of provider headquarter locations without an active category who have received a positive payment during the current year.
  - Ending Authorizations - Report of ending authorizations by a given date for a worker.
  - Under Utilization - Under Utilization Report for selected County, Attendance Period and Attendance Hours.
  - Parent Employment Summary By County - Report of all child care providers by county who appear to be in violation of the 40% children of employees rule.
  - Parent Employment Details By Provider - Report of all parent employment details for a provider for a particular month.

There are two reports: **Parent Employment Summary by County** and **Parent Employment Details by Provider**.

Local agencies should check the **Parent Employment Summary by County** report every month by the 15<sup>th</sup> of the month to see if any providers in their county are in noncompliance. Any provider that is listed in the report needs to be investigated. Details on each parent's employment are listed in the **Parent Employment Details by Provider** report. The reports are excellent indicators but require the local agency worker to verify the findings; therefore, parent

employment details in the report should be reviewed for accuracy prior to taking action against the provider.

To review the accuracy of the report, the worker should confirm the report's finding by reviewing the Parent Employment screen in CSAW and cross checking that information with parent employment information in CWW and ECF. The worker should also consider whether the provider has private pay children in addition to the Shares funded children. If the provider has private pay children, the worker will need to factor the number of private pay children into the formula.

To calculate the actual percentage of qualifying children:

- Determine the total number of authorizations (and private pay children) for the child care provider for all locations combined.
- Determine the total number of "non-qualifying" authorizations for the child care provider for all locations. Non-qualifying authorizations are for children who reside with employees of the child care provider or whose parent has reported his or her employer as being this child care provider (note that the employer's name may be listed slightly differently in CSAW or CWW, or may even be the name of the licensee, rather than the center).
- Take the number of "non-qualifying" authorizations and divide that number into the total number of authorizations (and private pay children) for the child care provider. If the resulting number is greater than 0.40, the provider is not in compliance with the 40% law.
- Take the total number of authorizations (and private pay children) and multiply it by 0.4. If the resulting number is not a whole number, disregard the numbers to the right of the decimal point and use just the remaining whole number. This is the maximum number of "non-qualifying" children for which the provider may care and receive Wisconsin Shares subsidy payments. NOTE, this number will change as the total number of authorizations increases or decreases.

In situations where the provider has a large proportion of private pay children and the worker is not able to verify the number of private pay children, the worker can substitute the total capacity for the center (found on the Location Details screen in CSAW) for the total number of authorizations when calculating the percentage of qualifying children.

If a provider appears on the report for three consecutive months, local agencies must investigate the provider in month one and again in month four. For example, the local agency ran the report October 15<sup>th</sup>, November 15<sup>th</sup>, December 15<sup>th</sup>, and January 15<sup>th</sup> and the same child care provider appeared for each report. An investigation of the provider must be conducted by the local agency for the October and January appearances.

### **SIX WEEK NOTICE TO PROVIDERS WHO ARE OUT OF COMPLIANCE**

For any provider that is verified to be out of compliance with the 40% rule, send a six week notice (Notice Template Attached) to the provider and send a copy to the Bureau of Program Integrity Technical Assistance Request mailbox at [DCFBPITArequest@wisconsin.gov](mailto:DCFBPITArequest@wisconsin.gov).

This notice informs the provider that the provider is currently out of compliance and that if the provider does not come into compliance within six weeks, all authorizations for children of parents employed by the provider will be terminated.

The attached template highlights in yellow the fields which need to be completed by the worker. Local Agencies may place their County/Tribe letterhead information at the top of the letter.

### ***TWO WEEK NOTICE TO PROVIDERS WHO CONTINUE TO BE OUT OF COMPLIANCE***

For providers who have received a 6 week notice and appear on the subsequent month's report, the county should issue a 2 week notice (Notice Template Attached) to the provider informing the provider that all authorizations to children of employees of the provider will be ended in two weeks due to the provider continuing to be out of compliance.

The attached template highlights in yellow the fields which need to be completed by the worker. Local Agencies may place their County/Tribe letterhead information at the top of the letter.

Within the next seven days, the county should end the authorizations to the children of employees of the provider effective the Saturday of the second week following the issuance of the two week notice unless the provider has given sufficient documentation to show that the provider is now in compliance. This will allow CSAW to issue the 7 day notice to both providers and parents that the authorizations are ending.

If the provider documents that he or she is in compliance prior to the authorization end date, the county should restore the authorizations to their original end dates. If the provider documents that he or she is in compliance after the authorizations have ended, the authorizations may be restored with the begin date being the Sunday of the week in which the provider gave sufficient documentation to show that the provider is now in compliance.

In instances where authorizations are for parents who reside in a different county than the provider, the county in which the provider is located is responsible for monitoring and enforcing this policy. The responsible county will need to copy the other county on both the six week and two week notices and work with the county responsible for the authorization to have those authorizations ended if necessary.

DCF will monitor the monthly Parent Employment Summary Reports to ensure that action is being taken on providers that are out of compliance.

### **CONTACTS**

For Wisconsin Shares Child Care policy questions outside of Milwaukee County contact your Bureau of Regional Operations (BRO) Child Care Coordinators at:  
<https://dcf.wisconsin.gov/files/wishares/pdf/coordinators.pdf>.

For Child Care CARES/CWW, CSAW and CCPI processing questions statewide, and policy questions in Milwaukee County, contact the Child Care Help Desk at: [childcare@wisconsin.gov](mailto:childcare@wisconsin.gov).

\*Program Categories – FS – FoodShare, MA – Medicaid, BC+ – BadgerCare Plus, SC – Senior Care, CTS – Caretaker Supplement, CC – Child Care, W-2 – Wisconsin Works, FSET – FoodShare Employment and Training, BC+ Core – BadgerCare Plus Core, 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.

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