



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

DECE/BCCSA OPERATIONS MEMO
No: 26-10
DATE: 3/23/2026
Child Care

FROM: David Timmerman, Director
Bureau of Child Care Subsidy Administration
Division of Early Care and Education
Department of Children and Families

SUBJECT: 40% Rule Monitoring Policy

CROSS REFERENCE: [Wisconsin Shares Handbook](#),
Section 16.5 Refusal to Authorize to a Provider
Wisconsin State Statute 49.155(3m)(e)2, Wisconsin
Shares Operations Memo 10-69 Enforcing the 40% Rule for
Children of Child Care Provider Employees

EFFECTIVE DATE: Immediately

PURPOSE: The purpose of this memo is to provide updated guidance for the 40% Rule and its monitoring processes.

BACKGROUND: Wisconsin Act 28 created statutory language [s. 49.155(3m)(e)] that instructs the Department and local agencies that Wisconsin Shares reimbursements may not be paid on behalf of children of a provider’s employees, or children who reside with a provider’s employees if more than 40% of the children for whom the provider is providing care fall into those categories. The statute 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.

The Department of Children and Families have evaluated and updated commentary about the 40% Rule to reflect changes to the Wisconsin Shares Program, and its operations.

POLICY: The following policy will be added to the Wisconsin Shares Handbook with the next update. New policy is highlighted in yellow. The following is a summary of the changes:

The local agency may refuse to issue an authorization to a provider if:

- The agency worker has verified that the provider currently has 2.5 or more authorizations per regulated slot
- A child care provider has a pending criminal charge alleging that they have committed a serious crime or have been convicted of committing a serious crime
- The child care provider has been convicted or is charged with a crime for which the offense substantially relates to the care of children; or the department or local agency determines that the offense substantially relates to the operation of a business
- The department or local agency reasonably suspects that the person has violated any provision under the Wisconsin Shares program
- More than 40 percent of the children cared for at a specific location are children of the provider's employees or children who live with the provider's employees, and the provider fails to restore compliance within 6 weeks after the Department or local agency determines that the provider has fallen below the required 60 percent threshold of qualifying children.

Authorizations cannot be written unless:

- The child care provider submits their prices to the local agency
- The child care need matches the provider's hours of operation
- The criteria in [Chapter 14](#) are met

NOTE: Certified Providers

Wis. Stat. §.49.155(3m)(e) only allows the payment of child care subsidies for a child whose parent is employed by the provider, or who resides with a provider's employee, only if the provider is licensed under s. 48.65. 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.

NOTE: The DCF Bureau of Operations Child Care Coordinators and Milwaukee Early Care Administration (MECA) will monitor the monthly Parent Employment Summary to ensure ongoing compliance with this statutory requirement.

CONTACTS:

For Wisconsin Shares policy questions outside of Milwaukee County contact your Bureau of Regional Operations (BRO), Child Care Coordinators at BRCCPolicyHelpDesk@wisconsin.gov.

For Program Integrity technical assistance, Child Care CARES/CWW and CSAW Processing Questions statewide, and policy questions in Milwaukee County, contact the Child Care Help Desk at: childcare@wisconsin.gov or 608-422-7200.

DCF/DECE/BCCSA/MRFH and KM