



State of Wisconsin
Department of Health and Family Services

Jim Doyle, Governor
Kevin R. Hayden, Secretary

February 22, 2008

Mr. Richard E. Petershack, Chairman
Governor's Small Business Regulatory Review Board
c/o Wisconsin Department of Commerce Small Business Ombudsman
201 W. Washington Avenue, 5th Floor
Madison, WI 53707

Dear Mr. ^{Rick}Petershack:

Thank you for giving the department the opportunity to meet with the members of the Governor's Small Business Regulatory Review Board (SBRRB) on January 8, 2007. The department appreciates the opportunity to provide information to the committee on the regulations for Wisconsin's family child care centers. Based on the comments received at the committee meeting and in the letter received on January 22, 2008, the department has made significant changes to the fiscal analysis in the proposed rulemaking order for HFS 45, Licensing Rules for Family Child Care Centers.

Definition of a family child care center

The department had proposed to change the definition of a family child care center to require a family child care center to be located in the licensee's residence which would prevent licensees from operating more than one center. The department is considering changes to this proposal based on comments received during the public comment period.

We wanted to address the concerns raised by the SBRRB regarding our calculation in the original analysis of a center's gross annual income. The SBRRB had requested that the department's analysis of the impact of this change in definition contain fact-based and reliable data to support the agency's estimate of a family child care center's gross annual income and the effect on a business's ability to grow and expand. The SBRRB indicated that the analytical approach and methodologies used by the department were flawed when making the determination that the proposed change to HFS 45 would not have a significant impact on a substantial number of small businesses.

Fact based and reliable data to support gross annual income estimates.

The department does not collect information on child care providers' income and this type of data is not relevant to the regulatory process. We do not collect data on the private pay portion of the regulated child care industry which constitutes an estimated 79% of the industry. Based on information collected by the Department of Workforce Development (DWD), which administers the child care subsidy reimbursement program used by low income working families, DHFS calculated the annual income range for family child care centers using private pay tuition rates.

Each year, DWD conducts a survey of child care providers to determine what the market (private pay) rate for child care services is in a county. The child care subsidy reimbursement rate is then set based on 75% of the market rate with regional influences taken into account. This is the best indicator that the department has available to determine what the actual private pay rate for child care is and to determine an estimated annual income for a family child care center.

In 2007, DWD implemented a rate freeze that freezes the reimbursement rate paid to child care providers to the 2006 levels in an effort to contain the costs associated with the child care subsidy. This rate freeze does not reflect a rate freeze in the private pay market and child care centers are free to set their tuition fees without regard to the child care subsidy rates.

In Milwaukee County, the data from DWD indicates that the child care subsidy is the primary source of income for many child care centers. The rate freeze put into effect in 2007 may have an impact on overall provider revenues that is not likely to be offset by revenues from the private pay families. However, the child care subsidy reimbursement rate is significantly higher in Milwaukee County than in other portions of the state.

In most other counties in the state, the subsidized child care market is a much smaller portion of the entire market. Many of the child care providers outside of Milwaukee County care for fewer children whose families receive a child care subsidy. These centers set and collect the market rate for all private pay children.

The department believes that using the DWD calculated market rate in the analysis most closely mirrors the actual rates charged by providers, while understanding there will be some variation due to individuals setting their own rates. The department estimated annual income for family child care providers at between \$31,000 and \$62,000 per year. In the survey presented by Ms. O'Donnell at the SBRRB hearing, approximately 50% of the respondents indicated their income falls within the range estimated by the department (78 of 164 respondents). An additional 27 respondents (16% of total) indicated that

their gross yearly income was between \$25,000 and \$30,000 per year, which is slightly below the range estimated by the department. Given that there is no way to determine how many of the child care providers surveyed had the 8 children in care as allowed by the licensure, the department believes its estimate was accurate.

Consideration of geographic locations when analyzing economic impact

The DWD market survey used by the department to estimate gross income takes into account geographic regions when determining the statewide average market rate. The results of the survey are grouped according to population density based on census data. The statewide average income is then calculated by averaging the 4 geographic areas.

Lost profits based on estimated net annual income.

The department is not able to calculate the estimated lost net annual income for family child care providers if the definition of a family child care center were to be changed as proposed in the original draft of the rule. We do not collect information on net annual incomes for family child care providers. In order to calculate the average net annual income for a family child care provider, information would have to be obtained from the Internal Revenue Service based on tax returns. This information is not available to the department. The department believes that net annual income would be less accurate than gross annual income due to the many variables that might affect the net income.

Consumer Price Index for 2007

The Consumer Price Index (CPI) as calculated by the Federal Reserve Bank for 2007 was 2.9. Using the CPI as the basis for the calculation of the effect on small businesses, any costs over \$900 would be considered high in the analysis.

Permanent enclosure requirements

HFS 45.06 (11) (b) 2. There shall be at least 75 square feet of outdoor play space for each child using the space at a given time.

The department believes that the proposed change to HFS 45.06 (11) (b) 4 which would require a permanent enclosure around any on-premises outdoor play space, is a minor technical change to the rule. The department estimates that 90% of all existing licensed family child care centers currently have a fence or other permanent enclosure due to identified hazards. The proposed change would require the remaining 10% of licensed family child care centers to install a fence or other permanent enclosure. The department will provide these current licensees a reasonable amount of time to install a fence and come into compliance with this minor rule change.

The proposed rule change which requires a fence or other permanent enclosure is consistent with requirements contained in Caring for Our Children: National Performance Standards for Health and Safety in Out-of-Home Care, second edition, developed by the American Academy of Pediatrics and the American Public Health Association. These standards require a 4-foot high fence or other enclosure including landscaping or plants around the outdoor play space. The rationale for this standard indicates "the standard helps to ensure proper supervision and protection, prevention of injuries, and control of the area. An effective fence is one that prevents a child from getting over, under, or through it and keeps children from leaving the fenced outdoor play area except when supervising adults are present. Although fences are not childproof, they provide a layer of protection for children who stray from supervision."

Costs

The licensing rules require that on-premises play space be a minimum of 75 square feet per child using the outdoor play space at a given time (600 sq. ft. for 8 children, this is the maximum number of children that can be in care at any one time). When calculating the costs of enclosing 600 sq. ft. of outdoor play space, the department contacted a chain building supply store with outlets across the state (Menards). The department obtained costs for various types of fencing that would meet the intent of the licensing requirements for a permanent boundary (4' in height). Based on these estimates the department indicated that the cost of fencing an outdoor play area could cost about \$300 including installation.

According to the information provided by the child care union at the SBRRB hearing, using a chain link fence or wood fence material could increase those costs substantially. The child care union estimated that the cost for chain link fencing from a private (non-chain) business at \$7,200 and a wood fence at \$18,000. These costs include installation. The department has adjusted the estimated cost of fencing 600 sq. ft. of outdoor play space to include the range of fencing materials. When calculating the effect on small businesses, the department acknowledges that the type of fencing material chosen would have a substantial effect on a small business. DHFS used the lower costs for fencing materials in the analysis because this type of material would be acceptable to the department to meet the rule.

Each municipality sets its own regulations and fees associated with installing a fence. Therefore it is not possible to determine the costs associated with local fees. It is important to note that the department does not require that the more expensive fencing materials be used and feels it is necessary to emphasize that the less expensive fencing materials would meet this requirement.

Number of family child care centers that do not currently have outdoor play space that is enclosed by a permanent boundary.

The department does not maintain documentation in its data system for which centers do not currently have a fence or other permanent boundary around an outdoor play space. When the original analysis was completed, the department estimated that 15% (624 of 3124) of all currently licensed family child care providers did not have outdoor play space that was enclosed by a permanent boundary. Since that original estimate was developed, the department has surveyed all the licensing staff to determine how many family child care centers actually do not have enclosed outdoor play space. Based on this informal survey, the department believes the actual number of family child care centers that do not have enclosed outdoor play space is closer to 8 – 10% (250 – 300 of 3124) of all licensed family child care centers. This number includes those family child care centers that utilize approved off-premises play space and are not required to have enclosed on-premises outdoor play space.

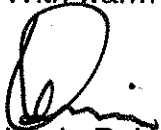
Barriers to being able to comply with the rule requiring a permanent boundary on outdoor play space

The department recognizes that some family child care centers may be located in neighborhoods that have deed restrictions that prohibit the installation of a fence. Currently, if the department determines that a hazard exists, licensees who are not able to install a fence are informed that a permanent boundary could include landscaping or plants.

The licensee may also request to use off-premises outdoor play space if no safe on-premises space is available. A licensee must submit a plan for the use of off-premises play space that includes the location of the space, distance from the center, method of getting to the space, toileting and diapering plans, supervision of children while using the space and compliance with the rules related to safe outdoor play space.

The department believes that the proposed revisions to the family child care center rules will help to better protect the health, safety and welfare of children in our of home care. Again, thank you for the opportunity to provide additional information to this committee. I hope you find this information useful in your work to support small businesses in Wisconsin.

With warm regards,



Kevin R. Hayden
Secretary