

**State of Wisconsin
Department of Children and Families**

Caregiver Background Checks

**DCF 12, 50, 51, 55, and 56
CR16-014**

The Wisconsin Department of Children and Families proposes to repeal ss. DCF 55.02(8)(note), 55.13(4)(b), 55.13(4)(b)(note), and 56.04(3)(a) and (b); to renumber and amend s. DCF 56.04(3)(intro.); to amend ss. DCF 55.02(2)(note) and (8), 55.03(1)(b)3. and 55.13(1)(a)1.(note), (2)(e), (3)(note), (4)(intro.), (4)(a), and (4)(d), 56.04(4)(a)9.c., and 56.05(1)(a)1.; to repeal and recreate ss. DCF 50.044 (3)(b), 50.045(3)(b), 51.07(1)(e), 55.08(4)(c), 55.13(4)(d) and (e), 55.13(5)(note), and 56.05(1)(f); and to create ch. DCF 12 and ss. 50.01 (4)(Lm), 55.02(5m), 55.13(5)(note), 56.03 (11s) and (27m), 56.05(1)(g), and 56.055, relating to caregiver background checks.

Analysis Prepared by the Department of Children and Families

Statutory authority: Sections 48.67 (intro.), 48.685 (1) (ag) 1. a., (2) (d), (4), (5) (a), (6) (b) and (c), 49.155 (1d), and 227.11 (2), Stats.

Statutes interpreted: Sections 48.01 (1) (f), 48.60, 48.62, 48.623, 48.65, 48.651, 48.66, 48.67, 48.685, 48.75, 48.88 (2) (am), 48.975, 48.979, 49.155 (1d), and 938.22, Stats.

Related statute or rule: Sections 48.833, 48.837, 48.839, 50.065, 120.13, Stats., and ch. DHS 12.

Explanation of Agency Authority

Section 48.67 (intro.), Stats., provides that the department shall promulgate rules establishing minimum requirements for the issuance of licenses to, and establishing standards for the operation of, child welfare agencies, child care centers, foster homes, group homes, shelter care facilities, and county departments. Those rules shall be designed to protect and promote the health, safety, and welfare of the children in the care of all licensees.

Section 48.685 (1) (ag) 1. a., Stats., directs the department to define “under the control of the entity” by rule.

Section 48.685 (2) (d), Stats., provides that every entity shall maintain or shall contract with another person to maintain the most recent background information obtained on a caregiver. The information shall be made available for inspection by authorized persons, as defined by the department by rule.

Section 48.685 (4), Stats., provides that an entity that violates s. 48.685 (2), (3), or (4m) (b), Stats., may be required to forfeit not more than \$1,000 and may be subject to other sanctions specified by the department by rule.

Section 48.685 (5) (a), Stats., directs the department to establish procedures by rule under which a person may show by clear and convincing evidence that he or she has been rehabilitated.

Section 48.685 (6) (b) 1., Stats., provides that caregivers licensed by the department, persons who are under 18 years of age and who are caregivers for a child care center, nonclient residents of an entity that is licensed by the department, and other persons specified by the department by rule shall send the background information form to the department.

Section 48.685 (6) (b) 2., Stats., provides that caregivers who are licensed or certified by a county department or an agency contracted with under s. 48.651 (2), Stats., nonclient residents of those entities, and other persons specified by the department by rule shall send the background information form to the county department or contracted agency.

Section 48.685 (6) (b) 3., Stats., provides that caregivers who are licensed by a child welfare agency, nonclient residents of those entities, and other persons specified by the department by rule shall send the background information form to the child welfare agency.

Section 48.685 (6) (b) 4., Stats., provides that caregivers who are contracted with by a school board, nonclient residents of those entities, and other persons specified by the department by rule shall send the background information form to the school board.

Section 48.685 (6) (c), Stats., provides a person who provides false information on a background information form may be required to forfeit not more than \$1,000 and may be subject to other sanctions specified by the department by rule.

Section 49.155 (1d), Stats., provides that the department shall promulgate rules establishing standards for the certification of child care providers under s. 48.651, Stats.

Section 227.11 (2) (a) (intro.), Stats., expressly confers rule-making authority on each agency to promulgate rules interpreting the provisions of any statute enforced or administered by the agency if the agency considers it necessary to effectuate the purpose of the statute.

Summary of the Proposed Rule

The proposed rulemaking order will create a Department of Children and Families caregiver background check rule as required under s. 48.685, Stats. In general, s. 48.685, Stats., applies to programs involving the care of children by entities that are regulated by the Department of Children and Families. The department's proposed rule is similar to the existing caregiver background check rule in ch. DHS 12. Chapter DHS 12 is a Department of Health Services rule that currently applies to background checks required under ss. 48.685 and 50.065, Stats. Most of the programs affected by the background checks required under s. 48.685, Stats., were in the Department of Health and Family Services until they were transferred when the Department of Children and Families was created. Chapter DHS 12 applies to background checks under s. 48.685, Stats., until the department creates its own rule.

In general, s. 48.685, Stats., requires a background check as a condition of regulatory approval and employment at, contract with, or nonclient residency at specified entities that care for children, including residential care centers, group homes, foster homes, shelter care facilities, child-placing agencies, licensed child care centers, certified child care providers, and child care programs established or contracted for under s. 120.13 (14), Stats. A background check is also required for an interim caretaker seeking subsidized guardianship payments and any nonclient residents of the interim caretaker.

Entity Contract to Conduct Background Checks and Retain Records

In general, the applicable regulatory agency conducts the background check on the person who has, or is seeking, regulatory approval and any person who is, or is seeking to be, a nonclient resident. The entity conducts the background check on a person who has, or is seeking, employment or contract as a caregiver.

Under the proposed rule, an entity may enter into a contract with any other entity or with a person, temporary employment agency, college, university, vocational or technical college or school to obtain and retain the required background information. The entity must retain a copy of the contract. For searches conducted under contract, the entity must obtain a copy of the completed background information disclosure if it is required under s. 48.685 (6), Stats., and the results of the search. The entity shall retain the most recent documentation for caregivers that the entity employs or contracts with, so the documentation may be promptly retrieved and reviewed by that regulates the entity.

Obtain Armed Forces Information

Section 48.685 (2), Stats., specifies the records that must be searched to conduct the background check. In general, these records include criminal history records, records of final determinations that a person abused or neglected a child, information on the status of applicable professional credentials maintained by the Department of Safety and Professional Services, the registry of findings of misappropriation of property of a client or neglect or abuse of a client under s. 146.40 (4g), Stats., and records of previous denials or revocations due to s. 48.685, Stats. In some cases, a search of a sex offender registry, a search of records of another state, a fingerprint-based search of national criminal history records, or various types of follow-up may be required.

The proposed rule also requires an agency or entity to make every reasonable effort to obtain the discharge status of a person who has served in the armed forces within the previous 3 years, including any reserve component. If the discharge status is other than honorable, the agency or entity shall obtain information on the nature and circumstances of the discharge. The proposed rule requires the agency or entity to document the efforts made to obtain the discharge status of the person.

Bars and Substantially-Related Convictions and Delinquency Adjudications

Specified offenses that are a bar. Under s. 48.685 (4m), Stats., an agency may not grant regulatory approval and an entity may not employ or contract with a caregiver or allow a nonclient to reside at the entity if the results of the background checks show certain criminal charges, convictions, delinquency petitions, delinquency adjudications, or administrative findings specified in s. 48.685 (4m), Stats., and s. DCF 12.02 (24), except in certain circumstances.

The proposed s. DCF 12.02 (24) includes a revised interpretation of the effect of a conviction or delinquency adjudication for the offenses specified in s. 48.685 (5) (bm) 4. and (br) 6. and 7., Stats. Section 48.685 (5) (bm) 4., Stats., applies to eligibility relating to foster care, subsidized guardianship, and adoption home studies. Section 48.685 (5) (br) 6. and 7., Stats., applies to eligibility relating to licensed child care, certified child care, and child care programs established or contracted for under s. 120.13 (14), Stats.

Under the current interpretation of s. 48.685 (5) (bm) 4. and (br) 6. and 7., Stats., a conviction or delinquency adjudication results in a 5-year bar to eligibility with no requirement to demonstrate rehabilitation when the 5-year period is over. Under the revised interpretation, a conviction or delinquency adjudication for these offenses will remain a bar to eligibility after the 5-year period, unless the person demonstrates rehabilitation. The 5-year period is a waiting period before a person may request a rehabilitation review.

When the proposed rule becomes effective, the revised statutory interpretation will apply to the following persons:

- A person seeking regulatory approval to be a caregiver if the regulatory approval is not a continuation or renewal of a regulatory approval the person has on the effective date of the rule.
- A person seeking employment or contract to be a caregiver with an entity if the person is not employed or contracted as a caregiver with that same entity on the effective date of the rule.
- A person seeking nonclient residency at an entity if the person is not a nonclient resident at that entity on the effective date of the rule.

Substantially-related criminal convictions and delinquency adjudications. Under s. 48.685 (5m), Stats., an agency may refuse to grant regulatory approval and an entity may refuse to employ or contract with a person to be a caregiver or to allow a nonclient to reside at the entity if the person was convicted of, or adjudicated delinquent for, a crime that is not a specified “serious crime,” but that is substantially related to the care of, or access to, a client or the activities of a program. The agency determines whether a criminal conviction or delinquency adjudication is substantially related for the person who has or is seeking regulatory approval and for nonclient residents. The entity makes the determination for persons who it employs or contracts with to be a caregiver.

The proposed rule lists factors that an agency or entity is required to consider in its determination of whether a person’s criminal conviction or delinquency adjudication is substantially related to care of, or access to, a client or the activities of a program. The factors are similar to the factors in ch. DHS 12. The proposed rule also requires the agency or entity to document how it reached the determination.

Reporting Requirements

The proposed rule includes a requirement that an entity report to the applicable regulatory agency if a caregiver or nonclient resident at an entity is the subject of specified pending criminal charges, convictions, delinquency petitions and adjudications, and specified administrative findings. The entity is required to report to the agency as soon as the entity knows or should have known of the action. An entity is also required to include in its personnel or operating policies a provision that requires caregivers who are employees or contractors to notify the entity as soon as possible, but no later than the entity’s next working day, if a specified action occurs.

Sanctions

The proposed rule provides that if an entity fails to comply with specified requirements, the agency that regulates the entity may impose sanctions. The possible sanctions include denial or revocation of regulatory approval, specific conditions or limitations placed on the regulatory approval, a forfeiture of not more than \$1,000, implementation of a plan for correcting personnel screening practices, and mandatory training at entity expense.

In addition, an agency may deny an application for regulatory approval if an applicant fails to properly complete and submit a background information disclosure.

Rehabilitation Reviews

Section 48.685 (5), Stats., provides that an agency may give regulatory approval and an entity may employ, contract with, or permit to reside at the entity a person who otherwise would not be eligible under s. 48.685 (4m), Stats., if the person can demonstrate to the agency that regulates the entity, by clear and convincing evidence, that he or she has been rehabilitated. Under the proposed rule, a person is not eligible for a rehabilitation review if s. 48.685 (5) (bm) or (br), Stats., does not permit the person with a

conviction or delinquency adjudication for that crime to demonstrate rehabilitation or requires a waiting period before the person may request rehabilitation and the waiting period has not ended. In addition, a person is not eligible for a rehabilitation review if within the preceding 12 months, the person was denied rehabilitation approval and the new request is for the same type of regulatory approval, job function, or nonclient resident status with the same level of direct contact with clients or unsupervised access to clients.

The proposed rule provides that an eligible person may submit an application for rehabilitation review to the agency that regulates the affected entity. The person has 90 days after the agency first receives the application to submit all supporting documentation and information requested in the application. The agency appoints a rehabilitation review panel of at least 2 persons to review the information submitted and schedules an opportunity for the person to appear before the panel and answer any questions the panel may have. In determining whether the person has demonstrated that he or she is rehabilitated, the panel considers rehabilitation decision factors that are in the proposed rule. The factors in the proposed rule are similar to the factors in the current caregiver background check rule in ch. DHS 12.

Under the proposed rule, an agency may grant rehabilitation approval only within the scope of its regulatory authority. The review panel shall issue a written decision that includes the type of entity the decision applies to, the types of approval that were requested and are either approved or denied in the decision, and any applicable conditions or limitations on an approval. The review panel may defer a decision for a period of not more than 6 months, unless the person who is the subject of the rehabilitation review agrees to a longer period. If the panel defers the decision, the panel shall send a notice to the person that states the reason for the deferral and the date that the panel will reconvene to review any new information affecting the request. If the panel denies the request, the decision shall include the reasons for the denial, notice that the person may appeal the denial, and a summary of the appeal process under s. 48.685 (5c), Stats.

An agency that granted a person a rehabilitation approval may immediately withdraw the approval if the agency has knowledge that the person has failed to comply with or abide by any conditions or limitations imposed with the approval or the person knowingly submitted false information or withheld pertinent information that could have or would have affected the review panel's decision to grant the rehabilitation approval.

An agency may accept a rehabilitation approval granted to a person by another agency if the previous rehabilitation approval applies to the same type of entity and the same type of approval. In addition, a certification agency may accept a rehabilitation approval granted to a person by the department if the previous rehabilitation approval applies to the same type of approval in a child care center licensed to care for 4 to 8 children. The agency that accepts a rehabilitation approval granted by another agency shall include any limitations or conditions that were included in the approval if the conditions or limitations imposed by the agency that granted the approval have not been terminated or have not expired.

Delegation under Section 48.979, Stats.

Under s. 48.979 (1), Stats., as created by 2011 Wisconsin 87, a parent who has legal custody of a child, by a power of attorney that is properly executed by all parents who have legal custody of the child, may delegate to an agent, any of his or her powers regarding the care and custody of the child, except the powers specified in s. 48.979 (1) (a), Stats.

An organization that facilitates delegations of care and custody is required to conduct a background check under s. 48.685, Stats., on a proposed agent and any nonclient resident of the agent. If the organization determines that a proposed agent or nonclient resident is ineligible to contract to be an agent

or to reside with an agent under s. 48.685 (4m), Stats., the proposed agent or nonclient resident may request a determination of eligibility for a rehabilitation review under s. 48.685 (5), Stats. Under the proposed rule, the department will conduct these rehabilitation reviews. In the proposed rule, the agent is included in the definition of caregiver at s. DCF 12.02 (4) (c). The agent is a contractor of the entity specified in s. DCF 12.02 (14) (L).

Adoption Assistance, Adoption Approval, Subsidized Guardianship, and Foster Homes

The proposed rule also updates cross-references from ch. DHS 12 to ch. DCF 12 and clarifies the procedures for conducting background checks in ch. DCF 50, Facilitating the Adoption of Children with Special Needs; ch. DCF 51, Adoption of Children with Special Needs and Preadoption Training; ch. DCF 55, Subsidized Guardianship; and ch. DCF 56, Foster Home Care for Children.

Summary of Factual Data and Analytical Methodologies

The proposed rule creates a Department of Children and Families version of ch. DHS 12, relating to caregiver background checks.

Summary of Related Federal Requirements

42 USC 671 (20) requires that states provide for background checks of any prospective foster or adoptive parent before the foster or adoptive parent may be finally approved for placement of a child and prohibits payment of foster care maintenance or adoption assistance if the record check indicates certain convictions or other findings. It also requires that states provide for background checks of any relative guardian before the guardian may receive subsidized guardianship payments on behalf of the child.

Comparison to Rules in Adjacent States

All states currently have background check requirements. No meaningful comparison to rules in adjacent states is possible because the proposed rule focuses on procedural issues that are specific to s. 48.685, Stats.

Effect on Small Business

The proposed rule will affect small businesses covered by s. 48.685, Stats., but the effect will be minimal.

Analysis Used to Determine Effect on Small Business or in Preparation of Economic Impact Analysis

The proposed rule is similar to the existing rule on caregiver background checks in ch. DHS 12.

Agency Contact Person

- For licensed child care, Anne Carmody, (608) 422-6023, anne.carmody@wisconsin.gov.
- For certified child care, Jolene Ibeling, (608) 422-6027, jolene.ibeling@wisconsin.gov.
- For foster care, subsidized guardianship, adoption approval, and delegations of care and custody of children under s. 48.979, Stats., Jonelle Brom, (608) 422-6930, jonelle.brom@wisconsin.gov.
- For residential care centers, group homes, shelter facilities, and child-placing agencies, Mary Morse, (262) 548-8694, mary.morse@wisconsin.gov.
- For rule procedure, Elaine Pridgen, (608) 422-7077, elaine.pridgen@wisconsin.gov.

SECTION 1. Chapter DCF 12 is created to read:

**Chapter DCF 12
CAREGIVER BACKGROUND CHECKS**

DCF 12.01 Purpose and scope. (1) This chapter is promulgated under the authority of ss. 48.67 (intro.), 48.685, 49.155 (1d), and 227.11 (2) (a), Stats., to specify procedures necessary to implement background checks required under s. 48.685, Stats., for caregivers and nonclient residents at an entity or with a caregiver specified in s. DCF 12.02 (4) (c).

Note: For further information on the scope of the caregiver background check, see s. DCF 12.02 for definitions of terms used in this subsection.

(2) Sections DCF 12.05 to 12.08 do not apply to an entity that facilitates delegations of the care and custody of children under s. 48.979, Stats., unless the entity is also licensed by the department.

Note: The department recommends that an unlicensed entity voluntarily comply with relevant provisions in ss. DCF 12.05, 12.06, and 12.08.

DCF 12.02 Definitions. In this chapter:

(1) “Agency” means the department, a county department, a certification agency, a child-placing agency, or a school board that establishes or contracts for a child care program under s. 120.13 (14), Stats.

(2) “Background information disclosure” means the form prescribed by the department on which a person provides information for purposes of the caregiver background check.

Note: DCF-F-2978-E, *Background Information Disclosure*, is available in the forms section of the department’s website at <http://dcf.wisconsin.gov> or from an agency or entity.

(3) “Bar” means any of the following:

(a) A barrier to a person’s eligibility for regulatory approval, employment, or contract as a caregiver.

(b) A barrier to a person’s nonclient residency at an entity or with a caregiver specified in s. DCF 12.02 (4) (c).

(4) “Caregiver” means any of the persons specified in s. 48.685 (1) (ag), Stats., and any of the following:

(a) A person who has, or is seeking, regulatory approval.

(b) A person who is, or is expected to be, an employee, a temporary employee, a student participating in a clinical or practicum at an entity as part of his or her curriculum, or a contractor of an entity if all of the following apply:

1. The person is, or is expected to be, under the control of the entity.

2. The person has, or is expected to have, regular, direct contact with clients of the entity.

(c) A person to whom delegation of the care and custody of a child under s. 48.979, Stats., has been, or is expected to be, facilitated by an entity.

Note: Section 48.685 (1) (ag) 2., Stats., provides that “caregiver” does not include an emergency medical technician or a first responder.

(5) “Caregiver background check” means the requirements in s. 48.685, Stats.

(6) “Certification agency” means the department in a county having a population of 750,000 or more or any county, person, or tribe that has a contract with the department to certify child care providers under s. 48.651 (2), Stats., in a particular county or tribal area.

(7) “Child-placing agency” means a person that is licensed under ch. DCF 54.

Note: A child-placing agency is an entity and may also be an agency. A tribe may be licensed as a child-placing agency under ch. DCF 54 or may provide similar services under tribal law.

(8) “Client” means a person who receives direct care or treatment services from an entity or from a caregiver specified in s. DCF 12.02 (4) (c). “Client” includes all of the following:

(a) An adopted child for whom adoption assistance payments are being made under s. 48.975, Stats.

(b) A child for whom subsidized guardianship payments are being made under s. 48.623, Stats.

(c) A person who is 18 to 21 years old, is receiving independent living services under 42 USC 677 (a) from an agency, is no longer placed in out-of-home care, and is residing in the foster home in which he or she was previously placed.

Note: Most types of “clients” are not specified in this definition because the phrase “a person who receives direct care or treatment services from an entity” clearly applies to them. For further information, see the definition of “entity” in s. DCF 12.02 (14).

(9) “Contractor” means, with respect to an entity, a person, or that person’s agent, who provides services to the entity under an express or implied contract or subcontract. “Contractor” includes a person who has staff privileges at the entity and a person to whom delegation of the care and custody of a child under s. 48.979, Stats., has been facilitated by the entity.

(10) “County department” means a county department of social services established under s. 46.22, Stats., or a county department of human services established under s. 46.23, Stats.

(11) “Department” means the department of children and families.

(12) “Direct contact” means face-to-face physical proximity to a client that affords the opportunity to commit abuse or neglect of a client or to misappropriate the property of a client.

(13) “Division of hearings and appeals” means the division of hearings and appeals within the department of administration.

(14) “Entity” means any of the following:

(a) A residential care center for children and youth that is required to be licensed as a child welfare agency under s. 48.60, Stats., and is licensed under ch. DCF 52 to provide care and maintenance for children and youth in its physical or legal custody.

(b) A child-placing agency.

(c) A foster home.

(d) An interim caretaker who receives subsidized guardianship payments under s. 48.623 (6) (am), Stats., and s. DCF 55.12.

(e) A person who meets all of the following conditions:

1. The person is seeking payments under s. 48.623 (6) (bm), Stats.

2. The person has entered into a subsidized guardianship agreement under s. 48.623 (2), Stats., following the death or incapacity of a guardian who had named the person as a prospective successor guardian.

3. The person has not been appointed as a successor guardian by a court under s. 48.977 (5m), Stats.

(f) A group home that is required to be licensed under s. 48.625, Stats., and is licensed under ch. DCF 57.

(g) A shelter care facility licensed under s. 938.22, Stats., and ch. DCF 59.

(h) A child care center that is licensed under s. 48.66, Stats.

- (i) A child care provider that is certified under s. 48.651, Stats.
 - (j) A child care program established or contracted for under s. 120.13 (14), Stats.
 - (k) A temporary employment agency that provides caregivers to another entity.
 - (L) An organization that facilitates delegations of the care and custody of children under s. 48.979, Stats., except as provided in s. DCF 12.01 (2).
 - (m) Any other entity included in s. 48.685 (1) (b), Stats.
- Note:** See s. 48.57 (3p), Stats., for information on background checks required for kinship care.

(15) “Final substantiated finding” means all of the following:

(a) A final determination made after January 1, 2015, that a person has abused or neglected a child under s. 48.981 (3) (c) 5m., Stats., and s. DCF 40.04 if the final determination has not been reversed or modified on appeal.

(b) A determination made before January 1, 2015, that a person has abused or neglected a child under s. 48.981 (3) (c) 4., 2011 Stats., if the determination has not been reversed or modified on appeal.

Note: The date in a statutory citation means that was the last edition of the statutes in which that provision appears.

(16) “Foster home” means a facility operated by a person who is required to be licensed under s. 48.62, Stats., and is licensed under ch. DCF 56, including a home operated by a person seeking adoption assistance under s. 48.975, Stats., and a home operated by a person seeking subsidized guardianship payments under s. 48.623, Stats.

(17) “Home study” means an assessment to determine whether an applicant is fit and qualified to care for a child and whether the physical environment of the applicant’s home is safe and healthy for all occupants.

(18) “Nonclient resident” means a person who meets all of the following criteria:

(a) The person is 12 years of age or over.

(b) The person resides, or is expected to reside, at an entity or with a caregiver specified in s. DCF 12.02 (4) (c).

(c) The person is not a client of the entity or of the caregiver specified in s. DCF 12.02 (4) (c).

(d) The person has, or is expected to have, regular, direct contact with clients of the entity or of the caregiver specified in s. DCF 12.02 (4) (c).

Note: Examples of “nonclient residents” include household members in foster homes, family child care centers, and certified child care homes.

(19) “Person” has the meaning specified in s. 990.01 (26), Stats.

Note: Section 990.01 (26), Stats., provides that “person” includes all partnerships, associations and bodies politic or corporate.

(20) “Regular, direct contact with clients” means contact that is scheduled, planned, expected, or otherwise a result of the person’s role or relationship with the client.

(21) “Regulatory approval” means any of the following:

(a) Issuance, continuation, or renewal of a license by the department under s. 48.66, Stats.

(b) Issuance or renewal of a license to operate a foster home by the department, a county department, or a child-placing agency under s. 48.75, Stats.

(c) Issuance or renewal of certification by a certification agency under s. 48.651, Stats.

(d) Approval of the person subject to the caregiver background check for a child care program to be established or contracted for by a school board under s. 120.13 (14), Stats.

(e) Approval of a person to be an interim caretaker who receives subsidized guardianship payments under s. 48.623 (6) (am), Stats., and s. DCF 55.12.

(f) Approval of a person who is seeking to be a successor guardian and to receive subsidized guardianship payments under s. 48.623 (6) (bm), Stats.

(g) Approval of pre-adoptive applicants for a home study for the purpose of adopting a child.

(h) Approval of a home study by the department, a county department, a child-placing agency, or a tribe for a person seeking adoption assistance under s. 48.975, Stats.

(22) “Rehabilitation review” means an agency process under which a person who has a bar may seek approval for any of the following:

(a) Regulatory approval.

(b) Employment or contract with an entity to be a caregiver for the entity.

(c) Residency at an entity or with a caregiver specified in s. DCF 12.02 (4) (c).

(23) “School board” means the board that has the powers specified in s. 120.13, Stats., for the schools of a school district.

(24) “Serious crime” means the offenses specified in s. 48.685 (1) (c), Stats., and all of the following:

(a) The offenses specified in s. 48.685 (5) (bm), Stats., if any of the following apply:

1. The affected entity is a foster home.

2. The affected person is an interim caretaker who is receiving, or is seeking, subsidized guardianship payments under s. 48.623 (6) (am), Stats., and s. DCF 55.12.

3. The affected person is seeking payment under s. 48.623 (6) (bm), Stats.

4. The subject of the background check is seeking regulatory approval of a home study under sub. (21) (g) or (h) or is a nonclient resident of a person seeking regulatory approval of a home study.

(b) For entities and approvals specified in par. (a) 1., 2., and 3., “serious crime” includes the offenses specified in s. 48.685 (5) (bm) 4., Stats., after the waiting period for eligibility to demonstrate rehabilitation, unless the person has demonstrated rehabilitation under s. DCF 12.13 or 12.14. This paragraph applies to all of the following:

1. A person seeking regulatory approval to be a caregiver specified in s. DCF 12.02 (4) (a) on or after [LRB insert effective date] if the regulatory approval is not a continuation or renewal of an approval the person has on [LRB insert effective date].

2. A person seeking employment or a contract to be a caregiver specified in s. DCF 12.02 (4) (b) with an entity on or after [LRB insert effective date] if the person is not employed or contracted as a caregiver with that same entity on [LRB insert effective date].

3. A person seeking nonclient residency at an entity if the person is not a nonclient resident at that entity on [LRB insert effective date].

(c) For a child care center that is licensed under s. 48.66, Stats.; a child care provider that is certified under s. 48.651, Stats.; and a child care program established or contracted for under s. 120.13 (14), Stats., “serious crime” includes the offenses specified in s. 48.685 (5) (br) 6. and 7., Stats., after the waiting period for eligibility to demonstrate rehabilitation, unless a person has demonstrated rehabilitation under s. DCF 12.13 or 12.14. This paragraph applies to the persons specified in par. (b) 1., 2., and 3.

Note: Tables that list serious crimes applicable to each program are available in the program regulatory sections of the department website at <http://dcf.wisconsin.gov>.

For group homes, residential care centers, child-placing agencies, and shelter facilities, see the child welfare licensing/background checks section of the department website.

For foster homes, adoption home studies, adoption assistance, and subsidized guardianship, see the foster care/related statutes and administrative rules section of the department website.

For child care, see the child care regulation/child care licensing or child care certification sections of the department website.

(25) “Tribe” means a federally-recognized American Indian tribe or band in this state.

(26) “Under the control of the entity” means that an entity does all of the following:

(a) Determines whether a person who is employed by or under express or implied contract with the entity and who has regular, direct contact with clients served by the entity may provide care, treatment, or other similar support service functions to clients.

(b) Directs or oversees one or more of the following:

1. The policies or procedures the person must follow in performing his or her duties.
2. The conditions under which the person performs his or her duties.
3. The tasks the person performs.
4. The person’s work schedule.
5. The supervision or evaluation of the person’s work or job performance, including imposing discipline and rewarding performance.
6. The compensation the person may receive for performing his or her duties.

DCF 12.03 Background information disclosure. (1) REQUIRED FORM. Each agency and entity shall use and require use of the background information disclosure prescribed by the department to be completed to obtain information about a person’s background from the person as provided in s. 48.685 (6), Stats.

Note: DCF-F-2978-E, *Background Information Disclosure*, is available in the forms section of the department’s website at <http://dcf.wisconsin.gov> or from an agency or entity.

(2) CHILD WELFARE ENTITIES. Each agency and entity specified in s. DCF 12.02 (14) (a) to (g) shall require the background information disclosure to be completed by caregivers and nonclient residents no more than 120 days before the agency or entity submits a request for information required under s. 48.685 (2) (am) or (b) and (3) (a) or (b), Stats.

(3) MAINTAINING CONFIDENTIALITY. Each agency and entity shall retain all completed department background information disclosures in a manner that ensures prompt retrieval of the forms for inspection and shall comply with applicable federal and state confidentiality laws.

DCF 12.04 Contracting for caregiver background checks. (1) CONTRACT. An entity may enter into a contract with any other entity or with a person, temporary employment agency, college, university, or vocational school to obtain the information required under s. 48.685 (2), (3), or (6), Stats.

(2) DOCUMENTATION. (a) An entity that enters into a contract under sub. (1) shall retain a copy of the agreement.

(b) An entity that enters into a contract under sub. (1) shall obtain from the entity, person, temporary employment agency, college, university, or vocational school that conducts the search for information

required under s. 48.685 (2) or (3), Stats., all of the following for each person who is the subject of a search:

1. A copy of the completed background information disclosure if completion of the background information disclosure is required under s. 48.685 (6), Stats.

2. The results of the search required under s. 48.685 (2) or (3), Stats.

(c) The entity shall retain the most recent documentation received under par. (b) for caregivers that the entity employs or contracts with, so the documentation may be promptly retrieved and reviewed by the agency that regulates the entity.

Note: For child-placing agencies, the record retention period in par. (c) only applies to contracting for background checks of employees and contractors of the agency. Different record retention requirements apply for records on foster parents.

DCF 12.05 Obtaining armed forces information. (1) If a person who is the subject of a caregiver background check served in a branch of the U.S. armed forces within the previous 3 years, including any reserve component, the agency or entity shall make every reasonable effort to obtain the discharge status of that person, either from the discharge papers issued to the person or from the armed forces branch in which the person served.

(2) The agency or entity shall document the efforts made to obtain the discharge status of the person.

(3) If the discharge status of the person is other than honorable, the agency or entity shall obtain information on the nature and circumstances of the discharge.

Note: The information from the armed forces may include relevant military court findings or information relevant to making a determination of whether an applicant is fit and qualified.

DCF 12.06 Determining whether other offenses are substantially related. (1) CAREGIVERS. To determine whether a caregiver's conviction or delinquency adjudication for an offense that is not a serious crime is substantially related to the care of a client or the activities of a program for purposes of s. 48.685 (5m), Stats., an agency or entity shall consider all of the following:

(a) In relation to the job or caregiving role, all of the following:

1. The nature and scope of the caregiver's client contact.
2. The scope of the discretionary authority and independent judgment the caregiver has to make decisions or take actions that affect the care of clients.
3. The opportunity caregiving presents for committing similar crimes.
4. The extent to which acceptable caregiving performance requires the trust and confidence of clients and the parents or guardians of clients.
5. The amount and type of supervision received.

(b) In relation to the criminal conviction or delinquency adjudication, all of the following:

1. Whether intent is an element of the crime.
2. Whether the elements or circumstances of the crime are related to the job or caregiving duties.
3. Any pattern of criminal convictions or delinquency adjudications.
4. The extent to which the crime relates to clients or other vulnerable persons.
5. Whether the crime involves violence or a threat of harm.
6. Whether the crime is of a sexual nature.

(c) In relation to the person, all of the following:

1. The number and type of crimes for which the person has been convicted or adjudicated delinquent.

2. The length of time between the conviction or delinquency adjudication and the decision affecting regulatory approval, employment, or contract.
3. The person's employment history, including references, if available.
4. The person's participation in or completion of pertinent programs of a rehabilitative nature.
5. The person's probation, extended supervision, or parole status.
6. The person's ability to perform or to continue to perform the job or caregiving role consistent with the safe and efficient operation of the program and the confidence of clients and the parents or guardians of clients.
7. The age of the person on the date the crime was committed.

(2) **NONCLIENT RESIDENTS.** To determine whether a nonclient resident's criminal conviction or delinquency adjudication for an offense that is not a serious crime is substantially related to a nonclient resident's access to clients or the activities of a program for purposes of s. 48.685 (5m), Stats., an agency shall consider all of the following:

(a) In relation to nonclient residency, all of the following:

1. The nature and scope of the nonclient resident's contact with clients or activities of the program.
2. The opportunity nonclient residency presents for committing similar crimes.
3. The amount and type of supervision of the nonclient resident.

(b) In relation to the criminal conviction or delinquency adjudication, all of the following:

1. Whether intent is an element of the crime.
2. Whether the elements or circumstances of the crime involve access to clients or activities of the program.
3. Any pattern of criminal convictions or delinquency adjudications.
4. The extent to which the crime relates to clients or other vulnerable persons.
5. Whether the crime involves violence or a threat of harm.
6. Whether the crime is of a sexual nature.

(c) In relation to the person, all of the following:

1. The number and type of crimes for which the person has been convicted or adjudicated delinquent.
2. The length of time between the conviction or delinquency adjudication and the determination affecting nonclient residency.
3. The person's participation in or completion of pertinent programs of a rehabilitative nature.
4. The person's probation, extended supervision, or parole status.
5. The age of the person on the date the crime was committed.

(3) **DOCUMENTATION.** (a) An agency shall document how it reached the determination under sub. (1) that the criminal conviction or delinquency adjudication of a caregiver under s. DCF 12.02 (4) (a) is or is not substantially related to care of a client or activities of the program.

(b) An agency shall document how it reached the determination under sub. (2) that the criminal conviction or delinquency adjudication of a nonclient resident is or is not substantially related to access to clients or activities of a program.

(c) An entity shall document how it reached a determination under sub. (1) that a criminal conviction or delinquency adjudication of a caregiver specified in s. DCF 12.02 (4) (b) is or is not substantially related to the care of a client or activities of a program.

Note: Form DCF-F-CFS2261-E, *Caregiver Background Checks Substantially Related Investigation Report*, is available, but is optional, for documentation of the determination as required in sub. (3). If a home study is required for foster care licensure, subsidized guardianship, or adoption approval, county

departments and child-placing agencies must include documentation of the determination in the home study.

An agency or entity is required to determine whether a criminal conviction or delinquency adjudication for an offense that is not a “serious crime” as defined in s. DCF 12.02 (24) is substantially related to the care of children or the activities of the program. It may be helpful to contact the appropriate clerk of court to obtain a copy of the criminal complaint and judgment of conviction as part of that investigation and determination. Section 48.685 (2) (bb), Stats., requires an agency or entity to contact the appropriate clerk of court to obtain a copy of the criminal complaint and judgment of conviction for a violation of s. 940.19 (1), 940.195, 940.20, 941.30, 942.08, 947.01 (1), or 947.013, Stats., if the conviction was within the past 5 years.

A person who was refused employment or who had his or her employment terminated and believes he or she may have been discriminated against, may file a complaint under s. 111.335, Stats., with the Equal Rights Division, Department of Workforce Development, P.O. Box 8928, Madison, WI 53708-8928 or telephone 608-266-6860.

DCF 12.07 Child welfare denial and revocation information. Each county department and child-placing agency shall provide the department with written information about each person for whom the county department or child-placing agency denied or revoked regulatory approval specified in s. DCF 12.02 (21) (b), (e), (f), (g), or (h) for a reason specified in s. 48.685 (4m), Stats. The county department or child-placing agency shall provide the information in an automation system prescribed by the department or on a form prescribed by the department.

Note: County departments and child-placing agencies with direct access to eWiSACWIS, the department’s child welfare automation system, enter the information into the system. Child-placing agencies that do not have direct access to eWiSACWIS provide the information on Form DCF-F-CFS2191, *Negative Action Notice*, which is available in the forms section of the department’s website, dcf.wisconsin.gov. Send the completed form to Out-of-Home Care Section, DCF/DSP, P.O. Box 8916, Madison, WI 53708-8916.

DCF 12.08 Reporting requirements. (1) ENTITY REPORTING OF OFFENSE. An entity shall report to the agency that gave regulatory approval as soon as the entity knows, or should have known, that any of the following apply to a caregiver or nonclient resident at the entity:

(a) The person is the subject of a delinquency petition alleging that the person committed a serious crime on or after his or her 12th birthday.

(b) The person has been adjudicated delinquent on or after his or her 12th birthday for committing any crime.

(c) The person is the subject of a pending criminal charge alleging that the person committed a serious crime.

(d) The person has been convicted of any crime.

(e) A final substantiated finding has been made that the person abused or neglected a child.

(f) A finding that is comparable to a final substantiated finding has been made in any other jurisdiction.

(g) A unit of government or a state agency as defined in s. 16.61 (2) (d), Stats., made a finding that the person has abused or neglected a client or misappropriated the property of a client.

(h) If a position requires a person to be credentialed by the department of safety and professional services, the person has been denied a credential or had a credential restricted or otherwise limited.

(2) OTHER ENTITY REPORTING. (a) An entity shall report to the agency that gave regulatory approval as soon as possible, but no later than the agency's next business day, if any of the following occurs:

1. A person who is age 12 or over and is not a client begins residing at, or is expected to reside at, an entity.

2. A person who is residing at the entity and is not a client turns 12 years of age.

3. A nonclient resident turns 18 years of age.

4. A corporation or limited liability company designates a new person to be subject to the caregiver background check.

5. A caregiver under s. DCF 12.02 (4) (a) or a nonclient resident at the entity changes his or her name.

(b) 1. When a change specified under par. (a) 1. to 4. occurs regarding an entity, the entity shall submit a completed background information disclosure for the new person subject to the caregiver background check to the agency as soon as possible, but no later than the agency's next business day.

2. Notwithstanding par. (a) 3., a nonclient resident in a child care center licensed under s. 48.66, Stats., or with a child care provider certified under s. 48.651, Stats., is not required to complete a background information disclosure if all of the following apply:

a. The nonclient resident is turning, or has recently turned, 18 years of age.

b. The nonclient resident previously submitted a completed background information disclosure to the department or certification agency.

(3) ENTITY POLICY. An entity shall include in its personnel or operating policies a provision that requires a person who is a caregiver specified in s. DCF 12.02 (4) (b) to notify the entity as soon as possible, but no later than the entity's next working day, if any of the following apply:

(a) The person is the subject of a delinquency petition alleging that the person committed a serious crime on or after his or her 12th birthday.

(b) The person has been adjudicated delinquent on or after his or her 12th birthday for committing any crime.

(c) The person is the subject of a pending criminal charge alleging that the person committed a serious crime.

(d) The person has been convicted of any crime.

(e) A final substantiated finding has been made that the person abused or neglected a child.

(f) A finding that is comparable to a final substantiated finding has been made in any other jurisdiction.

(g) A unit of government or a state agency as defined in s. 16.61 (2) (d), Stats., has made a finding that the person has abused a client or misappropriated the property of a client.

(h) If a position requires a person to be credentialed by the department of safety and professional services, the person has been denied a credential or had a credential restricted or otherwise limited.

DCF 12.09 Sanctions. (1) ENTITY. (a) An entity that commits any of the following acts may be subject to one or more of the sanctions specified in par. (b):

1. Hires, employs, or contracts with a caregiver or permits a nonclient resident to reside at an entity or with a caregiver specified in s. DCF 12.02 (4) (c) if the entity knows, or should know, that the caregiver

or nonclient resident is barred under s. 48.685 (4m) (b) or that a nonclient resident is ineligible for residency under s. 48.685 (5m), Stats.

2. Violates any provision in s. 48.685, Stats., or this chapter regarding caregivers specified in s. DCF 12.02 (4) (b) or (c), including requiring completion of a background information disclosure as required under s. 48.685 (6), and conducting the caregiver background check as required under s. 48.685 (2) and (3), Stats.

3. a. Knows, or should know, that a nonclient resident at the entity failed to complete and submit the background information disclosure to the applicable agency as required under s. 48.685 (6), Stats., or that a nonclient resident knowingly gave false information on or knowingly omitted information from the background information disclosure submitted to the applicable agency.

b. Knows, or should know, that a nonclient resident of a caregiver specified in s. DCF 12.02 (4) (c) failed to complete and submit the background information disclosure to the entity specified in s. DCF 12.02 (14) (L) as required under s. 48.685 (6), Stats., or that a nonclient resident knowingly gave false information on or knowingly omitted information from the background information disclosure submitted to the entity specified in s. DCF 12.02 (14) (L).

4. Fails to complete and submit the background information disclosure to the applicable agency as required under s. 48.685 (6), Stats.

5. Knowingly gives false information on or knowingly omits information from the background information disclosure submitted to the applicable agency.

6. Fails to comply with applicable reporting requirements under s. DCF 12.08 (1) or (2).

7. Fails to have a policy on reporting changes as required in s. DCF 12.08 (3).

(b) Any of the following sanctions may be imposed on an entity that commits any of the acts described in par. (a):

1. Denial, revocation, nonrenewal, suspension, or termination of regulatory approval.

2. Specific conditions or limitations placed on the regulatory approval.

3. A forfeiture of not more than \$1,000.

4. A requirement that the entity develop a written plan that specifies corrections that will be made to personnel screening practices, obtain agency approval of the correction plan, and implement the correction plan.

5. Attendance at agency-designated training on personnel screening or other appropriate training at entity expense.

(2) APPLICANT. An applicant for regulatory approval who does any of the following may be subject to denial of an application for regulatory approval:

(a) Fails to complete and submit a background information disclosure to the appropriate agency.

(b) Knowingly provides false information on or knowingly omits information from the background information disclosure submitted to the agency.

DCF 12.10 Rehabilitation reviews by agencies. (1) An agency shall conduct a rehabilitation review for a person who requests a rehabilitation review if the person is eligible under s. 48.685 (5), Stats., and s. DCF 12.11 and is any of the following:

(a) A person who has, or is seeking, regulatory approval from the agency as a caregiver specified in s. DCF 12.02 (4) (a).

(b) A person who is, or is expected to be, a caregiver specified in s. DCF 12.02 (4) (b) for an entity that is regulated by the agency.

(c) A person who is, or is expected to be, a nonclient resident at an entity that is regulated by the agency.

(2) Notwithstanding sub. (1), the department shall conduct rehabilitation reviews for a person who requests a rehabilitation review if the person is eligible under s. 48.685 (5), Stats., and s. DCF 12.11 and is any of the following:

(a) A person to whom delegation of the care and custody of a child under s. 48.979 has been, or is expected to be, facilitated by an entity.

(b) A person who is, or is expected to be, a nonclient resident of a person specified in par. (a).

DCF 12.11 Eligibility to request rehabilitation review. (1) A person who is not eligible under s. 48.685 (4m), Stats., to receive regulatory approval, to be employed as a caregiver, to contract with an entity to be a caregiver, or to reside at an entity or with a caregiver specified in s. DCF 12.02 (4) (c) may request a rehabilitation review, unless any of the following apply:

(a) The person is not permitted to demonstrate rehabilitation for the applicable offense under s. 48.685 (5) (bm) or (br), Stats.

(b) The person is not permitted to demonstrate rehabilitation for the applicable offense under s. 48.685 (5) (bm) or (br) Stats., during a waiting period that has not ended.

Note: Tables listing barring offenses and the availability of rehabilitation review for each offense are in the applicable program regulatory sections of the department website at <http://dcf.wisconsin.gov>.

For group homes, residential care centers, child-placing agencies, and shelter facilities, see the child welfare licensing/background checks section of the department website.

For foster homes, adoption home studies, and subsidized guardianship, see the foster care/related statutes and administrative rules section of the department website.

For child care, see the child care regulation/child care licensing or child care certification sections of the department website.

(c) Within the preceding 12 months, an agency denied the person's request for rehabilitation approval, and the new request is for the same type of regulatory approval, job function, or nonclient resident status with the same level of direct contact with clients or unsupervised access to clients.

DCF 12.12 Applying for rehabilitation review. To apply for rehabilitation review, a person who is eligible to request rehabilitation review under s. DCF 12.11 shall do all of the following:

(1) Obtain a rehabilitation review application on a form prescribed by the department and submit the completed application to the applicable agency.

Note: Form DCF-F-419, *Rehabilitation Review Application Instructions*, is available in the forms section of the department website, <http://dcf.wisconsin.gov>.

(2) Submit any supporting documents and information required by the rehabilitation review application to the applicable agency.

DCF 12.13 Agency rehabilitation review process. (1) **TIME FRAME.** If the application is not complete or any supporting documents or information required in the application are not submitted within 90 days after the date the application was first received by the applicable agency, the request for a

rehabilitation review shall be denied, unless the person requesting the rehabilitation review provides a good cause explanation.

(2) REHABILITATION REVIEW PANEL. If a person who is eligible for rehabilitation review under s. DCF 12.11 submits an application that is complete under s. DCF 12.12 no later than the deadline in sub. (1), the applicable agency shall appoint a review panel of at least 2 persons to review the information submitted. The panel may request additional information from the person requesting the review or from other agencies or persons familiar with the person.

(3) REQUESTER APPEARANCE. (a) The person requesting the rehabilitation review shall have an opportunity to appear before the review panel to present information and answer any questions the panel members may have.

(b) The person's appearance before the review panel may be in person, by telephone, or other technology approved by the agency.

(4) REHABILITATION DECISION FACTORS. After reviewing the information obtained, the review panel shall decide whether the person who is the subject of the rehabilitation review has demonstrated by clear and convincing evidence that he or she is rehabilitated for purposes of receiving regulatory approval, employment as a caregiver, contracting with an entity to be a caregiver, or residing at an entity or with a caregiver specified in s. DCF 12.02 (4) (c). The panel shall consider at least the following factors, as applicable:

(a) Personal references and comments from employers, persons, and agencies familiar with the applicant and statements from therapists, counselors, and other professionals.

(b) Evidence of successful adjustment to, compliance with, or proof of successful completion of parole, extended supervision, probation, incarceration, or work release privileges.

(c) Any investigations or enforcement actions by a regulatory agency for substantial noncompliance with applicable laws.

(d) Any subsequent contacts with law enforcement agencies, including arrests, charges, convictions, pending criminal or civil arrest warrants, civil judgments, or other legal enforcement actions or injunctions against the person.

(e) Any aggravating or mitigating circumstances surrounding the barring crime, act, or offense.

(f) Evidence of rehabilitation, such as public or community service, volunteer work, recognition by other public or private authorities for accomplishments or efforts or attempts at restitution, and demonstrated ability to develop positive social interaction and increased independence or autonomy of daily living.

(g) The age of the person at the time of the offense and the amount of time between the crime, act, or offense and the request for rehabilitation review.

(h) Whether the person is on the sexual offender registry under s. 301.45, Stats., or on a similar registry in another jurisdiction.

(i) A victim's impact statement, if appropriate.

(j) The person's employment history, including evidence of acceptable performance or competency and dedication to the person's profession.

(k) The nature and scope of the person's contact with clients in the position requested.

(L) The degree to which the person would be directly supervised or working independently in the position requested.

(m) The opportunity presented for someone in the position to commit similar offenses.

(n) The number, type, and pattern of offenses committed by the person.

- (o) Successful participation in or completion of recommended rehabilitation, treatment, or programs.
- (p) Unmet treatment needs.
- (q) The person's veracity.

(5) REVIEW PANEL DECISION. (a) *Scope.* An agency may grant rehabilitation approval only within the scope of its regulatory authority.

(b) *Deferral.* A review panel may defer a final decision for a period of not more than 6 months, unless the person who is the subject of the rehabilitation review agrees to a longer time period.

(c) *Written decision.* The review panel shall issue a written decision that includes the following information, as applicable:

1. 'Approval.' An approval shall state all of the following:

- a. The type of entity to which the decision applies.
- b. The types of approval that were requested and are approved in the decision, such as regulatory approval, employment as a caregiver, contract to be a caregiver, or nonclient residency at an entity.
- c. Any conditions or limitations placed on the approval.

Note: Examples of limited approval include approval for employment doing only certain job functions or approval to care for a specific child only.

2. 'Deferral.' A deferral shall state the reason for the deferral and the date that the review panel will reconvene to review any new information affecting the request.

3. 'Denial.' A denial shall include all of the following:

- a. The type of entity to which the decision applies.
- b. The types of approval that were requested and are denied in the decision, such as regulatory approval, employment as a caregiver, contract to be a caregiver, or nonclient residency at an entity.
- c. The reason for the denial.
- d. Notice that the person may appeal the denial and a summary of the appeal process under s. 48.685 (5c), Stats., and s. DCF 12.14.

(6) REVIEW PANEL DECISION DISTRIBUTION. (a) The review panel shall send its decision to the person who is the subject of the rehabilitation review and, if requested, a copy to entities specified by that person.

(b) Within 10 days after sending a rehabilitation review decision to the person who is the subject of the rehabilitation review, the review panel for an agency shall send all of the following to the department:

- 1. A copy of the review panel's decision.
- 2. A copy of the person's application under s. DCF 12.12 (1).
- 3. A completed rehabilitation review panel decision report on a form prescribed by the department.

Note: Form DCF-F-418-E, *Rehabilitation Review Panel Decision Report*, is available in the forms section of the department website at <http://dcf.wisconsin.gov>. The materials should be sent to the Office of Legal Counsel, Department of Children and Families, P. O. Box 8916, Madison, WI 53708-8916.

(7) RETENTION OF REHABILITATION DECISION DOCUMENTATION. (a) The agency shall retain a copy of the written decision by the rehabilitation review panel and any decisions from filed appeals that may result.

(b) The agency shall retain a copy of the rehabilitation review request and all materials or information obtained or notes made as part of the rehabilitation review decision for at least 10 years after the decision is made and any appeals are finalized.

DCF 12.14 Appealing a rehabilitation review panel's denial. (1) (a) A person who is denied rehabilitation approval may submit a written request for review of the decision under s. 48.685 (5c), Stats., within 10 days after the date of the written decision by the rehabilitation panel. No new evidence may be submitted.

(b) A person who appeals under this subsection shall bear the burden of proving, by a preponderance of the evidence, that the rehabilitation review panel for the agency erroneously exercised its discretion in deciding that the person did not show sufficient evidence to demonstrate that he or she is rehabilitated.

Note: Pursuant to s. 48.685 (5c), Stats., submit an appeal to the following, as appropriate:

1. To appeal a denial by a rehabilitation review panel for the department, a certification agency, or a child-placing agency, send the request to the Department of Children and Families, Office of Legal Counsel, P.O. Box 8916, Madison, WI 53708-8916.

2. To appeal a denial by a rehabilitation review panel for a county department, send the request to the director of the appropriate county department or his or her designee.

3. To appeal a denial by a rehabilitation review panel for the school board, send the request to the Superintendent of the Department of Public Instruction, 125 South Webster Street, Madison, WI 53703; or call (608) 266-3390.

(2) A person who receives an adverse decision from the secretary of the department or his or her designee under sub. (1) may request a contested case hearing under ch. 227, Stats., and ch. HA 1 within 10 days after the date of the written decision by the department.

Note: Send a request for a contested case hearing to the Division of Hearings and Appeals, 5005 University Avenue, Room 201, Madison, Wisconsin, 53705-5400. The fax number of the division is (608) 264-9885.

(3) A person who receives an adverse decision from a county department director or his or her designee has the right to appeal the decision under ch. 68, Stats.

DCF 12.15 Withdrawal of rehabilitation approval. (1) COMPLIANCE WITH APPROVAL CONDITIONS. A person whose rehabilitation is approved shall comply with any conditions and limitations imposed with that approval.

(2) CRITERIA FOR WITHDRAWAL. An agency that granted a person a rehabilitation approval may withdraw the rehabilitation approval if the person has done any of the following:

(a) The person has failed to comply with or abide by any conditions or limitations imposed with the rehabilitation approval.

(b) The person knowingly submitted false information or withheld pertinent information that could have or would have affected the review panel's decision to grant the rehabilitation approval.

(3) INFORMING THE GRANTING AGENCY. An entity or agency that becomes aware that a person has violated the conditions or limitations of a rehabilitation approval that was granted by another agency shall inform the agency that granted the approval of the violation.

(4) WITHDRAWAL NOTICE. If an agency withdraws a rehabilitation approval, it shall issue a written notice that explains the reasons for the withdrawal and informs the person whose approval has been withdrawn that he or she may appeal as provided in s. DCF 12.14.

(5) REPORTING TO THE DEPARTMENT. If an agency withdraws rehabilitation approval and the withdrawal results in a bar to regulatory approval, employment as a caregiver, contracting with an entity to be a caregiver, or residing at an entity, the agency that withdraws the rehabilitation approval shall immediately report the withdrawal to the department.

Note: Send reports of withdrawn rehabilitation approval to Department of Children and Families, Office of Legal Counsel, P.O. Box 8916, Madison, WI 53708-8916.

DCF 12.16 Permissive acceptance of a rehabilitation approval. (1) SCOPE. (a) An agency may accept a rehabilitation approval granted to a person by another agency if the previous rehabilitation approval applies to the same type of entity and the same type of approval.

Note: For example, a certification agency in County B may accept a rehabilitation approval to be a nonclient resident in a certified child care home if a certification agency in County A granted the same type of approval.

(b) A certification agency may accept a rehabilitation approval granted to a person by the department if the previous rehabilitation approval applies to the same type of approval for a child care center that is licensed to care for 4 to 8 children under s. 48.66, Stats.

(c) An agency that accepts a rehabilitation approval granted by another agency shall enforce any limitations or conditions that were included in the approval if the conditions or limitations imposed by the agency that granted the approval have not been terminated or have not expired.

(d) A rehabilitation approval granted by a tribe that conducts rehabilitation reviews pursuant to a plan approved under s. 48.685 (5d), Stats., may not be accepted.

Note: Rehabilitation approvals granted by a tribe under this chapter may be accepted.

(2) PROCESS. (a) If an agency learns that a person has had a previous rehabilitation review, the agency shall contact the department to request a copy of the rehabilitation decision and information on the status of any rehabilitation approval.

(b) If the previous rehabilitation review decision was an approval and the approval has not been withdrawn, the agency shall determine whether the approval is eligible to be accepted under sub. (1).

(c) If the previous rehabilitation approval is eligible to be accepted under sub. (1), the agency shall determine whether to accept or deny the previous approval.

(3) INELIGIBILITY OR DENIAL. If an agency determines that a person's previous rehabilitation approval may not be accepted under sub. (1) or the agency denies an eligible rehabilitation approval under sub. (2) (c), the agency shall inform the person of his or her right to submit an application for a new rehabilitation review under s. DCF 12.12 and shall process a submitted application under s. DCF 12.13.

SECTION 2. DCF 50.01 (4) (Lm) is created to read:

DCF 50.01 (4) (Lm) "Final substantiated finding" means all of the following:

1. A final determination made after January 1, 2015, that a person has abused or neglected a child under s. 48.981 (3) (c) 5m., Stats., and s. DCF 40.04 if the final determination has not been reversed or modified on appeal.

2. A determination made before January 1, 2015, that a person has abused or neglected a child under s. 48.981 (3) (c) 4., 2011 Stats., if the determination has not been reversed or modified on appeal.

Note: The date in a statutory citation means that was the last edition of the statutes in which that provision appears.

SECTION 3. DCF 50.044 (3) (b) is repealed and recreated to read:

DCF 50.044 (3) (b) Determine whether any of the following apply to an adoptive parent or proposed adoptive parent:

1. A final substantiated finding has been made that the adoptive parent or proposed adoptive parent has abused or neglected a child.
2. A finding that is comparable to a final substantiated finding has been made in any other jurisdiction where the adoptive parent or proposed adoptive parent has resided.

SECTION 4. DCF 50.045 (3) (b) is repealed and recreated to read:

DCF 50.045 (3) (b) Determine whether any of the following apply to an adoptive parent:

1. A final substantiated finding has been made that the adoptive parent has abused or neglected a child.
2. A finding that is comparable to a final substantiated finding has been made in any other jurisdiction where the adoptive parent has resided.

SECTION 5. DCF 51.07 (1) (e) is repealed and recreated to read:

DCF 51.07 (1) (e) A background check under s. 48.685, Stats., and ss. DCF 56.05 (1) (f) and 56.055.

SECTION 6. DCF 55.02 (2) (note) is amended to read:

DCF 55.02 (2) (note) Note: Form ~~F-82064~~ DCF-F-2978-E, *Background Information Disclosure*, is available in the forms section of the department website, <http://www.dcf.wisconsin.gov>, or by writing to the Division of Safety and Permanence, P.O. Box 8916, Madison WI 53708-8916.

SECTION 7. DCF 55.02 (5m) is created to read:

DCF 55.02 (5m) “Final substantiated finding” means all of the following:

- (a) A final determination made after January 1, 2015, that a person has abused or neglected a child under s. 48.981 (3) (c) 5m., Stats., and s. DCF 40.04 if the final determination has not been reversed or modified on appeal.
- (b) A determination made before January 1, 2015, that a person has abused or neglected a child under s. 48.981 (3) (c) 4., 2011 Stats., if the determination has not been reversed or modified on appeal.

Note: The date in a statutory citation means that was the last edition of the statutes in which that provision appears.

SECTION 8. DCF 55.02 (8) is amended to read: to read:

DCF 55.02 (8) “Nonclient resident” has the same meaning as in ~~s. 48.685 (1) (bm), Stats.~~ s. DCF 12.02 (18).

SECTION 9. DCF 55.02 (8) (Note) is repealed.

SECTION 10. DCF 55.03 (1) (b) 3. is amended to read:

DCF 55.03 (1) (b) 3. For not less than 6 consecutive months immediately before being named as the guardian of the child, the prospective guardian has been licensed as a foster parent and the prospective guardian and all ~~adults residing~~ nonclient residents in the guardian's home have met the background check requirements specified in s. 48.685, Stats., and s. ~~DCF 56.05 (1) (f)~~ and ss. DCF 56.05 (1) (f) and 56.055.

SECTION 11. DCF 55.08 (4) (c) is repealed and recreated to read:

DCF 55.08 (4) (c) Determine whether any of the following apply to the guardian:

1. A final substantiated finding has been made that the guardian abused or neglected a child.
2. A finding that is comparable to a final substantiated finding has been made in any other jurisdiction where the guardian has resided.

SECTION 12. DCF 55.13 (1) (a) 1. (note); (2) (e) 1. and 2.; (3) (note), and (4) (intro.) and (a) are amended to read:

DCF 55.13 (1) (a) 1. (note) Note: ~~Form F-82064, DCF-F-2978-E, Background Information Disclosure~~, is available in the forms section of the department website, <http://www.dcf.wisconsin.gov>, or by writing to the Division of Safety and Permanence, P.O. Box 8916, Madison WI 53708-8916.

(2) (e) 1. If the agency is informed that the interim caretaker or ~~an adult who is residing, or expects to reside,~~ a nonclient resident in the interim caretaker's home resided in the state of Wisconsin at any time during the 5-year period before the search, the agency shall contact each county in Wisconsin in which the person is a resident or was a resident during those 5 years for information on any child abuse ~~and~~ or neglect substantiation or similar report or finding.

2. If the agency is informed that the interim caretaker or ~~an adult who is residing, or expects to reside,~~ a nonclient resident in the interim caretaker's home resided outside the state of Wisconsin at any time during the 5-year period before the search, the agency shall check any child abuse or neglect registry maintained by any ~~state or other U.S.~~ jurisdiction in which the person is a resident or was a resident during those 5 years for information on any child abuse or neglect ~~substantiation or similar~~ report or finding.

(3) (note) Note: A list of Wisconsin county clerks of court is available at <http://www.wicourts.gov/contact/docs/clerks.pdf>. An investigation and determination regarding whether the circumstances of the convictions for the crimes specified in par. (c) are substantially related to the care of children under ~~sub. (4) (b) and~~ s. 48.685 (5m), Stats., is required. The specified crimes are misdemeanor battery, battery to an unborn child, battery—special circumstances, reckless endangerment, invasion of privacy, disorderly conduct, and harassment.

(4) (intro.) OFFENSES THAT ARE A BAR. Unless the person has demonstrated that he or she has been rehabilitated under s. 48.685 (5) or (5c), Stats., and ~~eh. DHS 12 ch. DCF 12~~, an agency may not provide subsidized guardianship payments to an interim caretaker if any of the following apply regarding the interim caretaker or a nonclient resident in the interim caretaker's home:

(a) The person has been convicted of a crime specified in s. 48.685 (1) (c) or (5) (bm), Stats., or a violation of a law of any other jurisdiction that would be a violation of s. 48.685 (1) (c) or (5) (bm), Stats., if committed in Wisconsin.

SECTION 13. DCF 55.13 (4) (b) and (4) (b) (note) are repealed.

SECTION 14. DCF 55.13 (4) (d) and (e) and (5) (note) are repealed and recreated to read:

DCF 55.13 (4) (d) A final substantiated finding has been made that the person abused or neglected a child.

(e) A finding that is comparable to a final substantiated finding has been made in any other jurisdiction.

(5) (note) Note: Agencies with direct access to eWiSACWIS, the child welfare automation system, enter the information directly into the system. Agencies that do not have direct access to eWiSACWIS, provide the information on Form DCF-F-CFS2191, *Negative Action Notice*, which is available in the forms section of the department's website, dcf.wisconsin.gov. Send the completed form to Out-of-Home Care Section, DCF/DSP, P.O. Box 8916, Madison WI 53708-8916.

SECTION 15. DCF 56.03 (11s) is created to read:

DCF 56.03 (11s) "Final substantiated finding" means all of the following:

(a) A final determination made after January 1, 2015, that a person has abused or neglected a child under s. 48.981 (3) (c) 5m., Stats., and s. DCF 40.04 if the final determination has not been reversed or modified on appeal.

(b) A determination made before January 1, 2015, that a person has abused or neglected a child under s. 48.981 (3) (c) 4., 2011 Stats., if the determination has not been reversed or modified on appeal.

Note: The date in a statutory citation means that was the last edition of the statutes in which that provision appears.

SECTION 16. DCF 56.03 (27m) is created to read:

DCF 56.03 (27m) "Nonclient resident" has the same meaning as in s. DCF 12.02 (18).

SECTION 17. DCF 56.04 (3) (intro.) is renumbered DCF 56.03 (3) and amended to read:

DCF 56.04 (3) (intro.) REAPPLICATION FOLLOWING DENIAL OR REVOCATION. No applicant or former licensee who, for a substantive reason, such as inappropriate discipline practices, inadequate mental health functioning or current abuse of alcohol or drugs, was denied a license or whose license was revoked may reapply for a license to any licensing agency within a period of 2 years following the effective date of license denial or revocation, ~~unless both of the following conditions are met:~~

SECTION 18. DCF 56.04 (3) (a) and (b) are repealed.

SECTION 19. DCF 56.04 (4) (a) 9. c. is amended to read:

DCF 56.04 (4) (a) 9. c. Notice that the licensing agency may contact the Wisconsin department of justice and any similar agency in another state jurisdiction, any federal or local law enforcement agency, any social services agency, or any other public or private agency to determine if there is any reason

specified under s. 48.685, Stats., ~~ch. DHS 12~~ ch. DCF 12, s. DCF 56.05 (1) (a) 3., or any other part of this chapter for the applicant to not be granted a license.

SECTION 20. DCF 56.05 (1) (a) 1. is amended to read:

DCF 56.05 Licensee qualifications. (1) PERSONAL REQUIREMENTS AND BACKGROUND.

(a) *General.* 1. A person licensed to operate a foster home shall be a responsible, mature individual who is fit and qualified, who does not abuse alcohol or drugs or have a history of a civil or criminal conviction or administrative rule violation that ~~is substantially related~~ relates related to caring for children or operating a foster home, ~~as described in ch. DHS 12~~ as determined using the factors in s. DCF 12.06, and who exercises sound judgment and displays the capacity to successfully nurture foster children.

SECTION 21. DCF 56.05 (1) (f) is repealed and recreated to read:

DCF 56.05 (1) (f) Background. The applicant or licensee and any nonclient residents in the applicant or licensee's home shall comply with the requirements in s. 48.685, Stats., and s. DCF 56.055.

SECTION 22. DCF 56.05 (1) (g) is created to read:

DCF 56.05 (1) (g) Reporting background changes. An applicant or licensee shall immediately notify the licensing agency if any of the following applies to the applicant, licensee, or a nonclient resident in the home:

1. The person has been convicted of any crime.
2. The person is the subject of a pending criminal charge.
3. The person has been adjudicated delinquent for committing a crime on or after his or her 12th birthday.
4. The person is the subject of a delinquency petition alleging that the person committed a crime on or after his or her 12th birthday.
5. A final substantiated finding has been made that the person abused or neglected a child.
6. A finding that is comparable to a final substantiated finding has been made in any other jurisdiction.
7. A governmental body made a finding that the person abused or neglected any client or misappropriated the property of any client.
8. The person has been or is being investigated by any governmental agency for any other act, offense, or omission, including an investigation related to the abuse or neglect, or threat of abuse or neglect, to a child or other client, or an investigation related to misappropriation of a client's property.
9. A person begins residing, or is expected to reside, in the foster home.

SECTION 23. DCF 56.055 is created to read:

DCF 56.055 Background checks. (1) PROVIDE INFORMATION. (a) Before a foster home license is issued or renewed, the applicant and any nonclient resident in the home shall each do all of the following:

1. Complete and submit to the agency the department's background information disclosure and written authorization for the agency to make follow-up contact with the Wisconsin department of justice and any other person or organization to determine if there is any reason under sub. (4) why the applicant should not be granted a license or have an existing license renewed.

Note: DCF-F-2978-E, *Background Information Disclosure*, is available in the forms section of the department website, <http://dcf.wisconsin.gov>, or by writing to the Division of Safety and Permanence, P.O. Box 8916, Madison WI 53708–8916.

2. Provide the agency with information on each person’s places of residence during the 5-year period before submission of the license application.

(b) Before an initial foster home license is issued or a license is renewed after a break in licensure, the applicant shall provide the agency or its designated agent with a set of fingerprints sufficiently clear to submit to the Wisconsin department of justice or other law enforcement agency for submission to the national crime information database as provided in s. 48.685 (2) (c) 1., Stats.

(2) CONDUCT BACKGROUND CHECK. The agency shall do all of the following:

(a) Obtain the information required under s. 48.685 (2) (am), Stats., regarding the applicant and any nonclient resident in the applicant’s home.

Note: Information on how to conduct an initial search of some of the required Wisconsin records is at <http://wi-recordcheck.org/>. Following the search, the agency will receive a report from the Department of Justice regarding results of the criminal records search and a report from the Department of Health Services regarding results of the search of other integrated databases. Further investigation may be required.

(b) Submit the fingerprints of the applicant under sub. (1) (b) to the Wisconsin department of justice or other law enforcement agency for submission to the national crime information database as provided in s. 48.685 (2) (c) 1., Stats.

(c) Conduct a reverse search of the Wisconsin sex offender registry using the applicant’s address.

Note: A reverse search by address can be done by entering applicant’s address at <http://doc.wi.gov/community-resources/offender-registry>. The Wisconsin Sex Offender Registry does not contain information on all convicted sex offenders.

The information is limited by the effective date of the applicable law and to those offenders who have been arrested and convicted, adjudicated, or committed for a crime specified under the law and who meet registration and publication requirements.

For example, certain sex offenses by juveniles or other persons may not meet registration or publication requirements. Please consider these limitations when obtaining information from the sex offender registry.

(d) Obtain a criminal history records search from any other jurisdiction in which the person is or was a resident if the agency is informed that a nonclient resident in the applicant’s home resided outside the state of Wisconsin at any time during the 3-year period before the search.

(e) Obtain information on child abuse or neglect reports or findings during the 5-year period before the search, as follows:

1. If the agency is informed that the applicant or a nonclient resident in the applicant’s home resided in the state of Wisconsin at any time during the 5-year period before the search, the agency shall contact each county in Wisconsin in which the person is a resident or was a resident during those 5 years for information regarding any child abuse or neglect reports or findings.

2. If the agency is informed that the applicant or a nonclient resident in the applicant’s home resided outside the state of Wisconsin at any time during the 5-year period before the search, the agency shall

check any child abuse or neglect registry maintained by any other jurisdiction in which the person is a resident or was a resident during those 5 years for any child abuse reports or findings.

(f) If the agency is informed that the applicant or a nonclient resident in the applicant's home served in a branch of the U.S. armed forces, including any reserve component, the agency shall make every reasonable effort to obtain information on the discharge status of the person. This information may be obtained from the discharge papers or from the armed forces branch in which the person served. If the discharge status is other than honorable, the agency shall obtain information on the nature and circumstances of the discharge.

Note: The information from the armed forces may include military court findings or other information that is relevant to making a determination of whether an applicant is fit and qualified.

(3) FOLLOW-UP. Follow-up investigation may be required and may include any of the following:

(a) If the results of the criminal history records search under sub. (2) (a), (b), or (d) indicate a charge of a crime specified in s. 48.685 (1) (c) or (5) (bm), Stats., or comparable law in any other jurisdiction, but do not completely and clearly indicate the final disposition of the charge, the agency shall make every reasonable effort to contact the appropriate clerk of court to determine the final disposition of the charge.

(b) If the background information disclosure indicates a charge or conviction of a crime specified in s. 48.685 (1) (c) or (5) (bm), Stats., or comparable law in any other jurisdiction, but the results of the criminal history records search under sub. (2) (a), (b), or (d) do not include the charge or conviction, the agency shall make every reasonable effort to contact the appropriate clerk of court to obtain a copy of the criminal complaint and the final disposition of the complaint.

(c) If the results of the criminal history records search under sub. (2) (a), (b), or (d); the background information disclosure; or any other information indicate that the person was convicted of a violation of s. 940.19 (1), 940.195, 940.20, 941.30, 942.08, 947.01 (1), or 947.013, Stats., or comparable law in any other jurisdiction, not more than 5 years before the agency obtained the information, the agency shall make every reasonable effort to contact the appropriate clerk of court to obtain a copy of the criminal complaint and judgment of conviction relating to that violation.

Note: A list of Wisconsin county clerks of court is available at <http://www.wicourts.gov/contact/docs/clerks.pdf>. An investigation and determination regarding whether the circumstances of the convictions for the crimes specified in par. (c) are substantially related to the care of children under s. 48.685 (5m), Stats., is required. The specified crimes are misdemeanor battery, battery to an unborn child, battery—special circumstances, reckless endangerment, invasion of privacy, disorderly conduct, and harassment.

(4) OFFENSES THAT ARE A BAR. Unless the person has demonstrated that he or she has been rehabilitated under s. 48.685 (5) or (5c), Stats., and ch. DCF 12, an applicant or licensee is unqualified to hold a license if the applicant or a nonclient resident in the foster home meets any of the following conditions:

(a) The person has been convicted of a crime specified in s. 48.685 (1) (c) or (5) (bm), Stats., or a violation of the law of any other jurisdiction that would be a violation of s. 48.685 (1) (c) or (5) (bm), Stats., if committed in Wisconsin.

Note: A table that lists applicable crimes is available on the department website, <http://dcf.wisconsin.gov>, in the child welfare licensing/background checks section.

(b) A governmental body has made a finding that the person has abused or neglected any client or misappropriated the property of any client.

(c) A final substantiated finding has been made that the person abused or neglected a child.

(d) A finding that is comparable to a final substantiated finding has been made in any other jurisdiction.

(5) DENIALS OR REVOCATION. The agency shall provide the department with information about each person who is denied a license or has a license revoked for a reason specified in sub. (4).

Note: Agencies with direct access to eWiSACWIS, the child welfare automation system, enter the information into the system. Agencies that do not have direct access to eWiSACWIS, provide the information on Form DCF-F-CFS2191, *Negative Action Notice*, which is available in the forms section of the department's website, dcf.wisconsin.gov. Send the completed form to Out-of-Home Care Section, DCF/DSP, P.O. Box 8916, Madison, WI 53708-8916.

SECTION 24. EFFECTIVE DATE. This rule shall take effect the first day of the month following publication in the Administrative Register as provided in s. 227.22 (2) (intro.), Stats.