# Chapter DHS 12

## CAREGIVER BACKGROUND CHECKS

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**Note:** Chapter HFS 12 was repealed and recreated as an emergency rule effective February 13, 2000. Chapter HFS 12 as it existed August 31, 2000 was repealed and recreated, Register, August, 2000, effective September 1, 2000. Chapter HFS 12 was renumbered chapter DHS 12 under s. 13.92 (4) (b) 1., Stats., and corrections made under s. 13.92 (4) (b) 7., Stats., Register November 2008 No. 635.

**Note:** This chapter applies to Department of Health Services and Department of Children and Families programs until such time as each of the departments can adopt separate rules.

### Subchapter I — General Provisions

**DHS 12.01 Authority and purpose.** This chapter is promulgated under the authority of s. 48.685 (1) (ag) 1. a., (2) (d), (4), (5) (a), (6) (b) and (c), Stats.; and s. 50.065 (1) (ag) 1. a., (2) (d), (4), (5), (6) (b) and (c), Stats.; and s. 227.11 (2), Stats., to protect from harm clients served by department−regulated programs, children placed in foster homes licensed by county departments of social or human services or private child–placing agencies or children who are being adopted, and children served in day care programs contracted by local school boards under s. 120.13 (14), Stats., by requiring uniform background information screening of persons regulated and persons who are employees of or under contract to regulated entities or who are nonclient residents of regulated entities.

**Note:** Administrative rules governing county certified day care centers appear in ch. DCF 202.

**History:** Cr. Register, August, 2000, No. 536, eff. 9−1−00; correction made under s. 13.92 (4) (b) 7., Stats., Register June 2009 No. 642.

**DHS 12.02 Applicability. (1)** SCOPE. (a) *Persons and agencies affected.* This chapter applies to the department; to applicants for regulatory approval from the department; to persons, agencies and entities that have received regulatory approval from the department; to county department and child−placing agencies that license foster homes and approve applications for adoption home studies; to foster home license applicants and licensees and applicants for an adoption home study; to school boards that establish or contract for daycare programs under s. 120.13 (14), Stats., and to applicants and persons under contract to a school board to operate a day care program under s. 120.13 (14), Stats.

(b) *Entities covered.* The entities subject to this chapter are those regulated under: chs. DHS 34, 35, 36, 40, 61, 63, 75, 82, 83, 85, 88, 89, 105, 110, 124, 127, 131, 132, 133, and 134, and chs. DCF 52, 54, 56, 57, 59, 250, 251, and 252, any other direct client care or treatment program that may be licensed or certified or registered by the department.

**History:** Cr. Register, August, 2000, No. 536, eff. 9−1−00; corrections in (1) (b) made under s. 13.92 (4) (b) 7., Stats., Register November 2008 No. 635; CR 10−091: am. (1) (b) Register December 2010 No. 660, eff. 1−1−11; correction in (1) (b) made under s. 13.92 (4) (b) 7. Stats., Register July 2011 No. 667; correction in (1) (b) made under s. 13.92 (4) (b) 7., Stats., Register August 2011 No. 668.

**Note:** This chapter applies to department of health services and department of children and families programs until such time as each of the departments can adopt separate rules.

**DHS 12.03 Definitions.** In this chapter:

**(1)** "Adoption home study" means an evaluation of a prospective adoptive family under ch. DCF 51 or 54.

**(2)** "Agency" means the department, a county department or a school board or a child welfare agency licensed under s. 48.60, Stats., as a child−placing agency.

**(3)** "Background information disclosure form" means the department's form, F−82064, on which a person provides certain information concerning the person's background.

**(4)** "Bar" means, as a noun, that a person is not permitted to receive regulatory approval, or be employed as a caregiver by or under contract with an entity, or to reside as a nonclient at an entity.

**(5)** "Caregiver" has the meaning specified in s. 48.685 (1) (ag) or 50.065 (1) (ag), Stats., whichever is applicable.

**(6)** "Client" means a person who receives direct care or treatment services from an entity. For the purposes of this chapter, "client" includes an adopted child for whom an adoption assistance payment is being made under s. 48.975, Stats.

**(7)** "Contractor" has the meaning specified in ss. 48.685 (1) (ar) and 50.065 (1) (bm), Stats.

**(8)** "County department" means a county department of social services established under s. 46.215 or 46.22, Stats., or a county department of human services established under s. 46.21 (2m) or 46.23, Stats.

**(9)** "Department" means the Wisconsin department of health services.

**Note:** This chapter applies to department of health services and department of children and families programs until such time as each of the departments can adopt separate rules.

**(10)** "Direct contact" has the meaning specified in ss. 48.685 (1) (ar) and 50.065 (1) (br), Stats.

**(11)** "Entity" has the meaning specified in s. 48.685 (1) (b) or 50.065 (1) (c), Stats., whichever is applicable.

**(12)** "Foster home" means any facility operated by a person required to be licensed under s. 48.62 (1), Stats., in which care and maintenance are provided for no more than 4 foster children, or, if all are siblings, for no more than 6 children, and also includes a treatment foster home that also provides structured professional treatment by trained individuals, and a home licensed for placement of children for adoption under s. 48.833, Stats., for whom adoption assistance will be provided under s. 48.975, Stats.

**Note:** The term "treatment foster home" no longer appears in the statutes.

**(13)** "Hospital" means a facility approved as a hospital under s. 50.35, Stats.

**(14)** "Nonclient resident" has the meaning specified in ss. 48.685 (1) (bm) and 50.065 (1) (cn), Stats.

**(15)** "Personal care services" has the meaning given in s. 50.065 (1) (cr), Stats.

**(16)** "Regular" means, in terms of direct contact with clients, contact that is scheduled, planned, expected, or otherwise periodic.

**(17)** "Regulatory approval" means:

(a) For purposes of s. 48.685, Stats., any of the following:

1. Issuance by the department of a license or certification or the continuation or renewal of a license or certification, or approval of a prospective adoptive parent application for a home study.

2. Issuance or renewal by a county department or child−placing agency of a foster home or treatment foster home license under s. 48.62 or 48.75, Stats., including a home licensed for placement of children for adoption under s. 48.833, Stats., for whom adoption assistance will be provided under s. 48.975, Stats., and includes approval of pre−adoptive applicants who contract for a home study with a licensed private child placing agency for approval of a placement of a child for adoption.

**Note:** Administrative rules governing county certified day care centers appear in ch. DCF 202.

**Note:** The term "treatment foster home" no longer appears in the statutes. See also the note to s. DHS 12.03 (22).

3. Approval by a school board under s. 120.13 (14), Stats., of day care services established by or contracted with a day care provider.

(b) For purposes of s. 50.065, Stats., issuance by the department of an entity license, certification, certificate of approval or registration, or approval by the department of the continuation of an entity license, certification, certificate of approval or registration.

**(18)** "Rehabilitation review" refers to an agency or tribal process where a person who is eligible under s. 48.685 (5) (a) or 50.065 (5), Stats., may seek the removal of a bar from regulatory approval, from employment as a caregiver at or contracting with an entity, or from residency at an entity.

**(19)** "School board" means the school board or board of school directors in charge of the schools of a school district.

**(20)** "Serious crime" has the meaning specified in s. 48.685 (1) (c) or 50.065 (1) (e), Stats., whichever is applicable.

**(20m)** "Substitute caregiver" means, with respect to a client who is receiving personal care services in the client's residence, an individual who provides personal care services to the client for 7 or fewer days in a 90−day period.

**(21)** "Supportive home care service agency" means a home health agency licensed under s. 50.49, Stats., and ch. DHS 133.

**(22)** (a) "Treatment foster home" means a family−oriented facility operated by a person or persons required to be licensed under s. 48.62 (1) (b), Stats., in which treatment, care and maintenance are provided for no more than 4 foster children.

(b) "Treatment foster home" includes a placement for adoption under s. 48.833, Stats., of a child for whom adoption assistance will be provided under s. 48.975, Stats., after adoption is finalized.

(c) "Treatment foster home" does not include a shift−staffed facility, except as permitted under s. DCF 38.02 (2) (d).

**Note:** Section 48.62 (1) (b), Stats., was repealed. The term "treatment foster home" no longer appears in the statutes.

**(23)** "Tribal governing body" means an elected tribal governing body of a federally recognized American Indian tribe.

**(24)** "Tribe" has the meaning specified in s. 50.065 (1) (g), Stats.

**(25)** "Under the entity's control" means an entity does all of the following:

(a) Determines whether a person employed by or under contract with the entity who has direct, regular 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 or awarding performance awards.

6. The compensation the person receives for performing his or her duties.

**History:** Cr. Register, August, 2000, No. 536, eff. 9−1−00**;** correction in (12) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2001, No. 544; corrections in (1), (3), (9), (15), (21) and (22) (c) made under s. 13.92 (4) (b) 6. and 7., Stats., Register November 2008 No. 635; EmR0832: emerg. r. and recr. (15), cr. (20m), eff. 11−1−08; CR 08−098: r. and recr. (15), cr. (20m) Register June 2009 No. 642, eff. 7−1−09; correction in (24) made under s. 13.92 (4) (b) 7., Stats., Register December 2010 No. 659.

## Subchapter II — Background Checks

**DHS 12.04 Contracting for background checks. (1)** An entity may enter into and shall retain an agreement or contract with any entity identified under s. 48.685 (1) (b) or 50.065 (1) (c), Stats., or with any college, or university, including any vocational or technical college or school, or temporary employment agency or other person, to have the entity, school, temporary employment agency, or other person obtain and retain required background information related to caregivers, including contractors, students, or temporary employees, who, as part of their curriculum, must participate in clinical or practicum experiences at an entity.

**(2)** An entity that enters into an agreement or contract under sub. (1) shall obtain, at a minimum, from the other entity, university, college or technical school, temporary employment agency, or other person contracted with, and shall retain so that it may be promptly retrieved for inspection by the agency, a letter indicating the name or names and social security numbers, if available, of the caregivers, including temporary employees, contractors, or students, listing any convictions learned of during the course of the required background checks, along with any substantiated findings of misconduct, licensure denial or restriction or any other credential limitation found by either the department or the department of safety and professional services.

**Note:** To obtain a master copy of the F−82064 Background Information Disclosure Form, in order to reproduce it, either download the form from the department's internet web site at www.dhs.wisconsin.gov/caregiver/index.htm, or you may request a copy of the form from the agency that regulates your entity.

**Note:** The only persons who may access information maintained by a county department regarding a substantiated report of child abuse or neglect against a person are those identified in s. 48.981 (7), Stats.

**History:** Cr. Register, August, 2000, No. 536, eff. 9−1−00; **correction in (2) made under s. 13.92 (4) (b) 6., Stats., Register February 2012 No. 674.**

**DHS 12.05 Sanctions. (1)** SANCTIONABLE ENTITY ACTIONS. An entity that commits any of the following acts may be subject to any of the sanctions specified in sub. (2):

(a) Hires, employs, or contracts with a caregiver, or permits to reside at an entity a nonclient resident, where the entity knows or should have known the caregiver or nonclient resident is barred under s. 48.685 (4m) (b) or 50.065 (4m) (b), Stats.

(b) Violates any provision of initial background information gathering or periodic background information gathering required by s. 48.685 or 50.065, Stats.

**(2)** ENTITY SANCTIONS. Any of the following sanctions may be imposed on any entity that commits any of the acts described in sub. (1):

(a) A forfeiture not to exceed $1,000.

(b) A requirement that the entity submit to the agency a written corrective action plan specifying corrections that will be made to the identified personnel screening practices needing correction and that the entity implement the plan.

(c) At entity expense, attendance at agency−designated personnel screening training or other appropriate training.

(d) Specific conditions or limitations placed on the license, certification or registration or on a school board−issued contract,

including denial, revocation, nonrenewal or suspension of regulatory approval issued by the department, or denial, nonrenewal or termination by a school board of a contract with a day care provider under s. 120.13 (14), Stats.

(e) For a person licensed to operate a child welfare agency, shelter care facility, group foster home or day care facility, any sanction or penalty described in s. 48.715, Stats.

(f) A requirement that the entity use, at entity expense, a temporary employment agency for screening and hiring personnel.

**(3)** SANCTIONABLE INDIVIDUAL ACTIONS. Any person who is required to complete a background information disclosure form and who commits any of the following actions may be subject to any of the sanctions specified in sub. (4):

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

(b) Knowingly gives false information on or knowingly omits information from the background information disclosure form submitted to an agency or entity.

(c) After submitting a background information disclosure form to an agency or entity, subsequently fails to report any information about a conviction for a crime or other act or offense requested on the background information disclosure form, about a substantiated finding of abuse or neglect or a client or of misappropriation of a client's property, or, in the case of a position for which the person must be credentialed by the department of safety and professional services, about a licensure denial, restriction, or other license limitation by either the department or the department of safety and professional services.

**(4)** INDIVIDUAL SANCTIONS. All of the following sanctions may be imposed by an agency on any person who commits any of the acts described in sub. (3):

(a) A forfeiture not to exceed $1,000.

(b) Denial or revocation of regulatory approval or the termination of a contract.

(c) Denial or termination of eligibility to reside at the entity.

(d) Special conditions or limitations placed upon the person, including restriction to an off−premises location during business hours or otherwise restricting the person's contact with clients.

**History:** Cr. Register, August, 2000, No. 536, eff. 9−1−00; **correction in (3) (c) made under s. 13.92 (4) (b) 6., Stats., Register February 2012 No. 674.**

**DHS 12.06 Determining whether an offense is substantially related to client care.** To determine whether a crime or a delinquency adjudication under s. 48.685 (5m) or 50.065 (5m), Stats., is substantially related to the care of a client, the agency or entity may consider all of the following:

**(1)** In relation to the job, any of the following:

(a) The nature and scope of the job's client contact.

(b) The nature and scope of the job's discretionary authority and degree of independence in judgment relating to decisions or actions that affect the care of clients.

(c) The opportunity the job presents for committing similar offenses.

(d) The extent to which acceptable job performance requires the trust and confidence of clients or a client's parent or guardian.

(e) The amount and type of supervision received in the job.

**(2)** In relation to the offense, any of the following:

(a) Whether intent is an element of the offense.

(b) Whether the elements or circumstances of the offense are substantially related to the job duties.

(c) Any pattern of offenses.

(d) The extent to which the offense relates to vulnerable clients.

(e) Whether the offense involves violence or a threat of harm.

(f) Whether the offense is of a sexual nature.

**(3)** In relation to the person, any of the following:

(a) The number and type of offenses the person committed or for which the person has been convicted.

(b) The length of time between convictions or offenses, and the employment decision.

(c) The person's employment history, including references, if available.

(d) The person's participation in or completion of pertinent programs of a rehabilitative nature.

(e) The person's probation or parole status.

(f) The person's ability to perform or to continue to perform the job consistent with the safe and efficient operation of the program and the confidence of the clients served including, as applicable, their parents or guardians.

(g) The age of the person on the date of conviction or dates of conviction.

**Note:** A person refused employment or who has 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.

**History:** Cr. Register, August, 2000, No. 536, eff. 9−1−00; CR 10−091: am. (intro.) Register December 2010 No. 660, eff. 1−1−11.

**DHS 12.07 Reporting background changes and nonclient residency. (1)** An entity shall include in its personnel or operating policies a provision that requires caregivers to notify the entity as soon as possible, but no later than the person's next working day, when any of the following occurs.

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

(b) 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.

(c) The person has a governmental finding substantiated against them of abuse or neglect of a client or of misappropriation of a client's property.

(d) In the case of a position for which the person must be credentialed by the department of safety and professional services, the person has been denied a license, or the person's license has been restricted or otherwise limited.

**(2)** When any of the following occurs relative to a signatory or other legal party to the entity application for regulatory approval or under which a contract under s. 120.13 (14), Stats., is signed, or relative to a nonclient resident at the entity, an entity shall, as soon as possible, but no later than the regulatory agency's next business day, report the information to the agency that gave regulatory approval, or the school board with which the day care entity contracts under s. 120.13 (14), Stats.

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

(b) 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.

(c) The person has a governmental finding substantiated against them of abuse or neglect of a client or of misappropriation of a client's property.

(d) In the case of a position for which the person must be credentialed by the department of safety and professional services, the person has been denied a license, or the person's license has been restricted or otherwise limited.

**(3)** When a person begins residing at or is expected to reside at an entity, or the signatory for licensure changes, the entity shall, as soon as possible, but no later than the regulatory agency's next business day, report the residency, expected residency, or signatory change to the agency that gave regulatory approval or to the school board that the day care entity contracts with under s. 120.13 (14), Stats., and submit to the regulatory agency a completed

background information disclosure form for the new nonclient resident or new signatory.

**History:** Cr. Register, August, 2000, No. 536, eff. 9−1−00; **corrections in (1) (d), (2) (d) made under s. 13.92 (4) (b) 6., Stats., Register February 2012 No. 674.**

**DHS 12.08 Armed forces background searches.** If a person who is the subject of a background search under s. 48.685 or 50.065, Stats., served in a branch of the U.S. armed forces, including any reserve component, within the last 3 years, the agency or entity shall make a good faith 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. If the discharge status is other than honorable, the agency or entity shall obtain information on the nature and circumstances of the discharge.

**History:** Cr. Register, August, 2000, No. 536, eff. 9−1−00; CR 10−091: am. Register December 2010 No. 660, eff. 1−1−11.

**DHS 12.09 Transmittal of background check information. (1)** When an entity sends a required background information disclosure form to the department under s. 48.685 (3) (a), Stats., the entity shall include in the transmittal all the following:

(a) Any reason for denial or revocation of a license or denial of an adoption application.

(b) The date of the license denial or revocation or adoption application denial.

**(2)** A child−placing agency or county department shall provide the department with written information about each person to whom the child−placing agency or county department denies a license or adoption home study approval for a reason specified in s. 48.685 (4m) (a), Stats., including all the following:

(a) The reason for denial or revocation of a license or denial of adoption application.

(b) The date of the license denial or revocation or adoption application denial.

**Note:** Send the information required in subs. (1) and (2) to the Bureau of Regulation and Licensing, Division of Children and Family Services, P. O. Box 8916, 1 West Wilson Street, Madison, WI 53708−8916.

**(3)** In addition to the persons specified in s. 48.685 (6) (b) 2., Stats., an entity shall send a completed background information disclosure form to the county department for a person who is licensed or an adoptive parent applicant studied by a county department.

**(4)** In addition to the persons specified in s. 48.685 (6) (b) 3., Stats., an entity shall send a completed background information disclosure form to the child−placing agency for a person who is in a home studied for adoptive parent applicant approval.

**History:** Cr. Register, August, 2000, No. 536, eff. 9−1−00.

**DHS 12.10 Maintaining confidentiality of background information disclosure forms.** Agencies and entities shall retain all required completed department background information forms in a manner that ensures prompt retrieval of the forms for inspection and shall comply with applicable federal and state confidentiality laws.

**History:** Cr. Register, August, 2000, No. 536, eff. 9−1−00.

**DHS 12.11 Supervision pending receipt of caregiver background checks.** Entity supervision required under ss. 48.685 (4m) (c) and 50.065 (4m) (c), Stats., shall include at a minimum periodic direct observation of the person.

**History:** Cr. Register, August, 2000, No. 536, eff. 9−1−00.

**DHS 12.115 Personal care services, disclosure of convictions.** Pursuant to s. 50.065 (2m) (d), Stats., Table DHS 12.115 lists the crimes for which an entity must disclose to a client or the client's guardian under s. 50.065 (2m) (a) 1., Stats., a conviction of a caregiver, other than a substitute caregiver, who provides personal care services to a client in the client's residence. For the purposes of s. 50.065 (2m) (a) 4. and (b), Stats., 'substitute caregiver' has the meaning given in s. DHS 12.03 (20m).

**Table DHS 12.115**

| Wisconsin Statutes | Crime |
|---|---|
| 940.19 (3), 1999 Stats. | Battery |
| 940.01 | First−degree intentional homicide |
| 940.02 | First−degree reckless homicide |
| 940.03 | Felony murder |
| 940.05 | Second−degree intentional homicide |
| 940.12 | Assisting suicide |
| 940.19 (2), (4), (5) or (6) | Battery (felony) |
| 940.22 (2) or (3) | Sexual exploitation by therapist; duty to report |
| 940.225 (1), (2) or (3) | 1st, 2nd or 3rd degree sexual assault |
| 940.285 (2) | Abuse of individuals at risk |
| 940.29 | Abuse of residents of penal facilities |
| 940.295 | Abuse or neglect of patients and residents |
| 943.20 | Theft |
| 943.201 | Unauthorized use of an individual's personal identifying information or documents |
| 943.203 | Unauthorized use of an entity's identifying information or documents |
| 943.32 | Robbery |
| 943.38 | Forgery |
| 943.41 | Financial transaction card crimes |
| 948.02 (1) or (2) | 1st or 2nd degree sexual assault of a child |
| 948.025 | Engaging in repeated acts of sexual assault of the same child |
| 948.03 (2) (a), (b) or (c) | Physical abuse of a child |
| 948.05 | Sexual exploitation of a child |
| 948.051 | Trafficking of a child |
| 948.055 | Causing a child to view or listen to sexual activity |
| 948.06 | Incest with a child |
| 948.07 | Child enticement |
| 948.08 | Soliciting a child for prostitution |
| 948.085 | Sexual assault of a child placed in substitute care |
| 948.11 (2) (a) or (am) | Exposing a child to harmful material or harmful descriptions or narrations |
| 948.12 | Possession of child pornography |
| 948.13 | Child sex offender working with children |
| 948.21 (1) | Neglecting a child |

**Table DHS 12.115 (Continued)**

| Wisconsin Statutes | Crime |
|---|---|
| 948.30 | Abduction of another's child; constructive custody |
| 948.53 | Child unattended in child care vehicle |
| 961.41 (1) | Manufacture, distribution or delivery of a controlled substance or a controlled substance analog |
| 961.41 (1m) | Possession with intent to manufacture, distribute or deliver a controlled substance or a controlled substance analog |
| 961.41 (3g) | Possession or attempt to possess a controlled substance or a controlled substance analog<br>Only if the date of conviction is within 5 or fewer years from the date the results of the criminal background check are obtained by the entity. |
| 961.43 (1) (a) | Acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge |
| 961.43 (1) (b) | To make, distribute or possess material designed to reproduce the trademark upon any drug or container or label so as to make a counterfeit substance or to duplicate the physical appearance, form, package or label of a controlled substance |
| A violation of the law of any other state or United States jurisdiction that would be a violation of a crime listed in this table. | |

**History:** EmR0832: emerg. cr. eff. 11−1−08; CR 08−098: cr. Register June 2009 No. 642, eff. 7−1−09.

## Subchapter III — Rehabilitation Review

**DHS 12.12 Rehabilitation process for persons who have committed certain offenses. (1)** GENERAL PROVISIONS. (a) An agency shall conduct rehabilitation reviews as described in this section for persons who are eligible to receive rehabilitation review under this section for any of the following:

1. Entities the agency regulates.
2. Persons an entity employs.
3. Persons an entity contracts with.
4. Nonclient residents of an entity.

(b) 1. A tribal governing body may conduct rehabilitation reviews under ss. 48.685 (5) and 50.065 (5), Stats., if a plan submitted under s. 48.685 (5d) or 50.065 (5d), Stats., has been approved by the department.

2. Tribes desiring to conduct rehabilitation reviews shall send a rehabilitation review plan required under ss. 48.685 (5d) and 50.065 (5d), Stats., to the department.

**Note:** Send rehabilitation review plans to the Office of Legal Counsel, Department of Health Services, P.O. Box 7850, 1 West Wilson St., Rm 651, Madison, WI 53707−7850.

**(2)** ELIGIBILITY TO REQUEST REHABILITATION REVIEW.. (a) Any person who is ineligible under s. 50.065 (4m) (a) or (b), or 48.685 (4m) (a) or (b), Stats., to receive regulatory approval, to be employed as a caregiver, or to contract with or reside at an entity, may request a rehabilitation review if the person meets both of the following conditions:

1. The person has not requested a rehabilitation review for a similar type of regulatory approval, job function or nonclient resident status within the preceding year. In this subdivision, "similar" means comparable regulatory approval, or a comparable job function or activity.

**Note:** Examples of "similarity" and "comparability" are positions that require a comparable level of direct contact with children; a comparable level of unsupervised client access; a previous review involved family day care and the applicant is seeking licensing for group day care; or the applicant sought a group home license and now is seeking a child−caring institution license.

2. If the person is a foster home license applicant under s. 48.62, Stats., or an applicant for an adoption home study, the person has not been convicted of a serious crime under s. 48.685 (5) (bm) 1., 2. or 3., Stats., another crime listed in section III of the appendix that results in a permanent bar, or a similar serious crime in another jurisdiction or, if the person was convicted of a crime under s. 48.685 (5) (bm) 4., Stats., the crime was committed more than 5 years before the background check was requested.

(b) If a person is eligible to request a rehabilitation review, the agency or tribe from which the person is seeking regulatory approval, or the entity with whom the person is seeking employment as a caregiver or a contract, or where the person wishes to reside shall give the person information on rehabilitation review eligibility criteria and on how to obtain the rehabilitation review request form.

**Note:** To obtain a master copy of the Department's Rehabilitation Review Request Form (EXS−263) in order to reproduce it, either download the form from the department's internet site at www.dhs.wisconsin.gov/caregiver/index.htm, or request a copy of the form from, as appropriate, the agency that regulates the entity or from the entity.

**(3)** INITIATING A REHABILITATION REVIEW REQUEST. To request a rehabilitation review, an eligible person shall do all of the following:

(a) Obtain a rehabilitation review request form developed by the department or applicable tribe and submit the completed form to the agency that regulates the entity, or to the applicable tribe, or for day care programs established under s. 120.13 (14), Stats., to the school board.

(b) Submit any supporting documents and information required by the applicable rehabilitation review request form to the same agency, tribe, or school board.

**(4)** PROCESSING REHABILITATION REVIEW REQUESTS. (a) *Rehabilitation review panel.* When an eligible person has filed a complete rehabilitation review request form along with all required additional and supporting information, the applicable agency, tribe, or school board shall appoint a review panel of at least 2 persons to review the information submitted. The panel may request additional information from the person or from other agencies or persons familiar with the person requesting the review.

(b) *Time frame.* If the application form and any requested supporting materials are not complete within 90 days of the date the application is submitted, and the person requesting the review does not have good cause for the failure to submit a complete application form or supporting materials, the rehabilitation approval shall be denied.

(c) *Requester appearance.* The person requesting the rehabilitation review shall have an opportunity to appear before the review panel to answer any questions the panel members may have.

(d) *Rehabilitation decision formulation and factors.* After reviewing the information obtained, the review panel shall decide whether the person has demonstrated, by clear and convincing evidence, that the person is rehabilitated for purposes of receiving regulatory approval, employment as a caregiver, or contracting with or residing at an entity. The panel shall consider at least the following factors, as applicable:

1. Personal reference checks and comments from employers, persons, and agencies familiar with the applicant and statements from therapists, counselors and other professionals.

2. Evidence of successful adjustment to, compliance with or proof of successful completion of parole, probation, incarceration or work release privileges.

3. Proof that the person has not had subsequent contacts with law enforcement agencies leading to probable cause to arrest or evidence of noncompliance leading to investigations by other regulatory enforcement agencies.

4. Any pending or existing criminal or civil arrest warrants, civil judgments or other legal enforcement actions or injunctions against the person.

5. Any aggravating or mitigating circumstances surrounding the crime, act or offense.

6. 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.

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

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

9. A victim's impact statement, if appropriate.

10. Employment history, including evidence of acceptable performance or competency in a position and dedication to the person's profession.

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

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

13. The opportunity presented for someone in the position to commit similar offenses.

14. The number, type and pattern of offenses committed by the person.

15. Successful participation in or completion of recommended rehabilitation, treatment or programs.

16. Unmet treatment needs.

17. The applicant's veracity.

**(5)** REHABILITATION DECISIONS. (a) *Review panel decision.* The review panel shall decide whether to approve, defer, or deny rehabilitation approval, and shall issue a written decision to that effect, as follows:

1. If the review panel finds sufficient evidence to support rehabilitation approval, the decision shall indicate, as applicable, whether the person is eligible for regulatory approval, employment as a caregiver, or contracting with or residency at an entity. The decision shall describe the scope of the rehabilitation approval and state any conditions or limitations placed on the approval, such as whether the approval is only for employment doing certain job functions or the eligibility for regulatory approval is only to operate certain entity types.

2. If the review panel decides to defer a rehabilitation decision, the panel decision shall state the reasons for the deferral. Unless otherwise agreed to by the requester, the panel may defer a final decision for a period of not more than 6 months from the initial decision date.

3. If the review panel decides to deny approval of the rehabilitation request, the decision shall explain the reasons for the denial and inform the requester that he or she may appeal the decision as described in s. 48.685 (5c) or 50.065 (5c), Stats., as applicable, by filing a written request for review of the decision within 10 days of receipt.

**Note:** Pursuant to s. 48.685 (5c), Stats., or 50.065 (5c), Stats., submit an appeal to the following, as appropriate: 1. To appeal a department denial of a rehabilitation approval, send the appeal request to the Department of Health Services, Office of Legal Counsel, P.O. Box 7850, Madison, WI 53707−7850. 2. To appeal a school board denial of a rehabilitation approval, send the appeal request to the Superintendent of the Department of Public Instruction, 125 South Webster St., Madison, WI 53703; or call 608−266−3390. 3. To appeal a county denial of a rehabilitation approval, send the appeal request to the appropriate county. When any of the preceding rehabilitation appeals are denied, a further appeal is available under ch. 227, Stats. Send a request for a ch. 227, Stats., hearing to appeal any of the preceding department, department of public instruction or county denials of rehabilitation appeals to the Division of Hearings and Appeals, P. O. Box 7875, Madison, WI 53707−7875. The request may be delivered in person to that office at 5005 University Avenue, Suite 201, Madison, Wisconsin.

**Note:** Any person who is listed in the department's caregiver misconduct registry under ch. DHS 13 as having a substantiated finding of abuse or neglect of a client or misappropriation of a client's property as the result of an action the person took while working as a nurse aide in a federally certified nursing home or intermediate care facility for persons with mental retardation (ICF/MR) is permanently prohibited from being employed, in any capacity, in a federally–certified nursing home or a federally–certified ICF/MR. If such a person obtains a rehabilitation approval, the person is eligible to be considered for regulatory approval, for employment as a caregiver, or for non−client residency at or contracting with other entities covered by ss. 50.065 and 48.685, Stats. See 42 CFR 483.13 and 483.420 for federal regulations relating to nurse aides.

(b) *Burden of proof.* A person who appeals under par. (a) 3. shall bear the burden of proving, by a preponderance of the evidence, that the agency or tribe abused its discretion in deciding that the person did not show sufficient evidence to support rehabilitation approval.

(c) *Review panel decision distribution.* The review panel shall send its decision to the requester and a copy, if appropriate, to the entity. If the agency conducting the rehabilitation review is other than the department or a tribe, the review panel shall also, within 10 days of sending its decision, send a completed copy of the department's required reporting form regarding any rehabilitation decision to the department. If the entity conducting the rehabilitation review is a tribe, the review panel shall also send a copy of the decision to the same address accompanied by a copy of the requester's application materials.

**Note:** Rehabilitation decisions should be addressed to the Office of Legal Counsel, Department of Health Services, P. O. Box 7850, 1 W. Wilson St., Room 651, Madison, WI 53707−7850.

(d) *Maintaining rehabilitation decision documentation.* The review panel shall maintain a file containing a copy of the original written decision and any decisions from filed appeals that may result. The agency or tribe shall maintain in the file the rehabilitation review request and all materials or information obtained or notes made as part of the rehabilitation review decision.

**(6)** REHABILITATION APPROVAL COMPLIANCE AND WITHDRAWALS. (a) *Approval conditions.* A person who receives rehabilitation approval shall comply with all conditions and limitations imposed with that approval.

(b) *Rehabilitation approval violation−−mandatory withdrawal.* An agency or tribe that has granted a person a rehabilitation approval shall withdraw the approval if the agency or tribe learns that the person is no longer eligible under s. 50.065 (4m) (a) or (b), or 48.685 (4m) (a) or (b), Stats., for regulatory approval, to be employed as a caregiver, or to contract with or reside at an entity.

(c) *Rehabilitation approval violation—summary suspension.* An agency or tribe that granted a person a rehabilitation approval may immediately temporarily rescind the rehabilitation approval when the agency or tribe has knowledge that the person has done either of the following:

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

2. The person knowingly submitted false information or withheld pertinent information relevant to the rehabilitation request that otherwise could or would have affected the review panel's decision to grant the rehabilitation approval.

(d) *Informing agencies or tribes.* An agency, entity or tribe other than the agency or tribe that granted a rehabilitation approval, that becomes aware that any person has violated his or

her rehabilitation approval under par. (b) or (c), shall inform the agency or tribe that granted the approval, of the violation.

(e) *Review of summary suspensions.* 1. Within 10 working days of temporarily rescinding a rehabilitation approval under par. (c), the approving agency or tribe shall determine whether the new information related to an approval violation under par. (c) is valid and represents a risk of harm to the client. If the new information is valid and does represent a risk of harm to the client, the approving agency or tribe shall withdraw the rehabilitation approval, thereby re−imposing, as applicable, the person's bar from regulatory approval, from employment as a caregiver or from contracting with or residing at an entity.

2. An agency, entity, or tribe, as applicable, that determines the new information related to an approval violation under par. (c) represents a risk of harm to a client shall also immediately take appropriate measures to protect clients until any appeal filed under par. (g) is exhausted. Appropriate measures may include a repeal of regulatory approval, termination of employment as a caregiver or of approval to reside at an entity, contract termination, reassigning the person away from duties involving direct regular contact with clients or placing the person on temporary leave.

(f) *Withdrawal decisions.* When an agency or tribe withdraws a rehabilitation approval, it shall issue a written decision to that effect. The decision shall explain the reasons for the withdrawal and inform the requester whether he or she may appeal under par. (g).

(g) *Appeal rights.* Any person who has his or her rehabilitation approval withdrawn under par. (f) may file an appeal of this decision as provided in sub. (5) (a).

(h) *Withdrawal reporting.* When an agency or tribe that granted a rehabilitation approval withdraws the approval, and the withdrawal results in a bar to regulatory approval, to eligibility to work as a caregiver, or to contracting with or residing at an entity, the approving agency or tribe shall immediately report the withdrawal to the subunit of the department responsible for collecting this information.

**Note:** Send reports of withdrawn rehabilitation approval to: Office of Legal Counsel, Department of Health Services, P. O. Box 7850, 1 West Wilson Street, Room 651, Madison, WI 53707−7850.

**(7)** SCOPE OF AGENCY OR TRIBE REHABILITATION APPROVAL. (a) *Agency approval limitations.* An agency may grant rehabilitation approval only within the scope of its regulatory authority. The approval applies to all types of entities, job activities and functions the agency regulates, unless the agency specifies otherwise in the form of limitations or conditions expressed in the written rehabilitation approval decision.

(b) *Tribe approval limitations.* A tribe may only grant rehabilitation approvals within the scope of its own employment, contracting, or licensing authority.

(c) *Rehabilitation approval transfers.* 1. When an agency, tribe, or entity learns from the department's background information disclosure form or in any other way that an applicant for regulatory approval, for employment as a caregiver, or for a contract with or permission to reside at an entity has had a rehabilitation review, the agency, tribe, or entity shall request from the rehabilitation review agency or tribe a copy of the rehabilitation review decision. If the rehabilitation review decision was an approval, the agency, tribe or entity shall determine whether the approval may be applied to the regulatory approval, employment as a caregiver, or contract with or residency at an entity that the applicant currently seeks.

2. Except as specified in subd. 3., an agency, entity, or tribe may review and accept a rehabilitation granted to a person by another agency or tribe if the receiving agency or tribe determines both of the following:

a. The crime, act, or offense that required the person to request rehabilitation review is not substantially related to the person's job duties.

b. Any limitations or conditions imposed with the rehabilitation approval continue to be able to be met.

3. No rehabilitation approval granted by a tribe may be transferred outside of the tribe's employment or contracting authority.

4. Before transferring a rehabilitation approval under subd. 1., an agency, tribe, or entity shall verify with the department that the applicant has had a rehabilitation review, and if so, the date and status of that review and whether any reason other than the one the applicant reported on the background information disclosure form exists that requires the applicant to request a rehabilitation review.

5. If the decision of the agency or tribe that conducted the rehabilitation review is to deny approval of transferring the rehabilitation approval, the agency, entity, or tribe shall determine whether the applicant for regulatory approval, for employment as a caregiver, or for contracting with or residency at an entity is eligible to seek another rehabilitation review under sub. (2), and if so, shall inform the person of his or her eligibility.

**Note:** Examples of circumstances in which approvals may or may not be transferable include the following:

1. An approval to be a foster parent by one county or child−placing agency is not, unless approved by the other county or child−placing agency, transferable to the other county or child−placing agency.

2. An approval by the department for a person to work as a shipping clerk in a hospital or nursing home would be transferable to another entity or job function or activity regulated under ch. 50, Stats., as long as limitations or conditions, if any, imposed with the rehabilitation approval are able to be met.

3. A rehabilitation approval for employment at a children's day care or a child caring institution is not transferable to a hospital or nursing home or vice versa.

4. A rehabilitation approval is not transferable from a group day care center to a family day care center if the department's rehabilitation approval imposed limits or conditions.

5. A rehabilitation approval is transferable from one department−regulated child care residential setting to another as long as any limitations or conditions can be met.

**History:** Cr. Register, August, 2000, No. 536, eff. 9−1−00; CR 10−091: am. (6) (g) Register December 2010 No. 660, eff. 1−1−11.