Chapter DCF 12

CAREGIVER BACKGROUND CHECKS

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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.

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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 July 1, 2016 if the regulatory approval is not a continuation or renewal of an approval the person has on July 1, 2016.

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 July 1, 2016 if the person is not employed or contracted as a caregiver with that same entity on July 1, 2016.

3. A person seeking nonclient residency at an entity if the person is not a nonclient resident at that entity on July 1, 2016.

(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 demon-

strated 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.

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DCF 12.03 Background information disclosure. In this chapter:

(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.

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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.

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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.

History: CR 16−014: cr. Register June 2016 No. 726, eff. 7−1−16.

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.

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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.

History: CR 16−014: cr. Register June 2016 No. 726, eff. 7−1−16.

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.

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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.

History: CR 16–014: cr. Register June 2016 No. 726, eff. 7–1–16.

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).

History: CR 16–014: cr. Register June 2016 No. 726, eff. 7–1–16.

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.

History: CR 16−014: cr. Register June 2016 No. 726, eff. 7−1−16.

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.

History: CR 16−014: cr. Register June 2016 No. 726, eff. 7−1−16.

DCF 12.13 Agency rehabilitation review process. In this chapter:

(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.

History: CR 16−014: cr. Register June 2016 No. 726, eff. 7−1−16.

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: A request for a hearing may be mailed to Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707−7875 or faxed to (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.

History: CR 16−014: cr. Register June 2016 No. 726, eff. 7−1−16.

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.

History: CR 16−014: cr. Register June 2016 No. 726, eff. 7−1−16.

DCF 12.16 Permissive acceptance of a rehabilitation approval. In this chapter:

(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.

History: CR 16−014: cr. Register June 2016 No. 726, eff. 7−1−16.