

2. Evidence of successful adjustment or 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 resulting in probable cause for arrest or evidence of noncompliance resulting in an investigation by any other regulatory agency.

4. Whether the person has any pending or existing arrest warrants or civil judgements or other legal enforcement actions or injunctions.

5. 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 resituation.

7. The amount of time that has passed between the crime, act or offense and the request for rehabilitation review.

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

9. Victim's impact statement, if appropriate.

10. Employment history, including demonstrated ability to develop positive social interaction and increased independence or autonomy of daily living and evidence of competency in position and dedication to profession.

(d) Rehabilitation review decision response. 1. a. The review panel shall meet to review and issue a written decision within 90 working days of the receipt of the requester's complete written request for rehabilitation review.

b. The review panel's decision shall be in writing and sent to the requester with a copy provided, if applicable, to the entity and, if the entity is a department-designated tribe, a copy shall also be sent to the department along with a copy of the requester's submitted application materials.

Note: See note under subd. 4. regarding the department's reporting form for rehabilitation decision reporting by review panels. A department-designated tribe is to send its rehabilitation decision and copies of the requester's application materials to: Office of Legal Counsel, Department of Health and Family Services, P.O. Box 7850, 1 West Wilson St., Rm 651, Madison, WI 53701-7850.

2. 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, contracting or residency at an entity. The decision shall describe the scope of the rehabilitation approval with any conditions or limitations that may be prescribed, that is, whether the approval is only for certain job functions, activities or arrangements and for what type of entity or, if a regulatory approval, for what type of entity, and any conditions or limitations that may be prescribed for regulatory approval.

3. If the review panel's decision is to deny approval for the rehabilitation request, the written response shall explain the reasons for denial and inform the requester that he or she has the right to file an appeal under par. (e) on the decision as follows:

a. Any person who is permitted but fails under subd. 1., to demonstrate to the department, a department-designated tribe or a child-placing agency that he or she has been rehabilitated and should be considered eligible for regulatory approval or for employment at or contracting with an entity or residency as a nonclient at an entity, may appeal to the secretary of the department or his or her designee. Any person adversely affected by a decision of the secretary or his or her designee under this paragraph may request a contested case hearing under ch. 227, Stats.

b. Any person who is permitted but fails under subd. 1., to demonstrate to the county department that he or she has been rehabilitated and should be considered eligible for regulatory approval or for employment at or contracting with or residency as a nonclient at an entity, may appeal to the director of the county department or his or her designee. Any person who is adversely affected by a decision of the director or his or her designee under this paragraph has a right to appeal the decision under ch. 68, Stats.

c. Any person who is permitted but fails under subd. 1., to demonstrate to the school board that he or she has been rehabilitated and should be considered eligible for regulatory approval or for employment at or contracting with or residency as a nonclient at an entity, may appeal to the superintendent of public instruction or his or her designee. Any person who is adversely affected by a decision of the superintendent or his or her designee under this paragraph has a right to a contested case hearing under ch. 227, Stats.

4. If a review panel's decision is to defer a rehabilitation decision, the written decision shall indicate the reason or reasons for the deferral and the duration of the deferral may not be for longer than 6 months from the date of the deferral.

5. The review panel shall send a completed copy of the department's required reporting form regarding any rehabilitation decision to the subunit of the department responsible for collecting that information.

Note: Send a written rehabilitation decision to: Office of Legal Counsel, Department of Health and Family Services, P.O. Box 7850, 1 West Wilson St., Rm 651, Madison, WI 53701-7850.

6. The review panel shall maintain on file a copy of the written decision under this paragraph along with any decisions from filed appeals that may result. The agency or tribe shall maintain on file the rehabilitation review request and all materials requested in that request and any other materials or information or notes obtained as a part of the rehabilitation review decision.

(e) Appeal. 1. A person aggrieved by an agency's or tribe's decision under par. (d) that the person did not produce sufficient evidence to support rehabilitation approval may request a hearing on that decision by filing a written request for a hearing with the department of administration's division of hearings and appeals within 10 days after receiving the notice under par. (d).

2. The appellant 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.

Note: Submit a request for a hearing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

(4) **REHABILITATION APPROVAL COMPLIANCE.** (a) Approval status. A person under sub. (2) (a) who has had his or her rehabilitation review request approved under sub. (3) (d), and subsequently was, as applicable, given regulatory approval or approval to be employed at or to contract with or reside at an entity, shall comply with all conditions and limitations as may be imposed with that approval. A person who has received rehabilitation approval and fails to comply with the conditions for rehabilitation approval or who subsequently commits a crime, act or offense that is cause for a bar under s. HFS 12.10 (2) shall, as provided under par. (b), have his or her rehabilitation approval withdrawn by the approving agency or tribe.

(b) Violation of rehabilitation approval. An agency, entity or tribe aware of any person who has violated his or her rehabilitation approval for a reason under par. (a) shall inform the agency or department-designated tribe that approved the person's rehabilitation. The applicable approving agency or tribe or the department may immediately temporarily deny or rescind a rehabilitation approval of a person when the agency or tribe has knowledge that the person has done any of the following:

1. Fails to comply with or abide by the conditions or limitations of an approval granted under sub. (3) (d).

2. Has committed a new crime, act or offense and is no longer eligible for regulatory approval or employment at, contracting with or residency as a nonclient at an entity under s. HFS 12.10 (2).

3. Knowingly submitted false information or withheld pertinent information relevant to the rehabilitation request that would have or could have affected the review panel's decision under sub. (3) (d) to approve the person's rehabilitation.

(c) Review. 1. The approving agency or department-designated tribe shall consider whether the new information received is valid and represents a risk of harm to the client and, if so, shall rescind rehabilitation approval, thereby reimposing the person's bar to regulatory approval or to employment or contracting with an entity or residency at an entity.

Note: If the new information does not represent a risk of harm to a client, the agency or tribe should work in concert with the entity and consider, as necessary, any measures to ameliorate or mitigate the situation such as a change in job function or position or a change in regulatory status of the entity regulated.

2. As applicable, an agency, entity or tribe that believes the new information on a person under subd. 1., represents a risk of harm to a client shall immediately take appropriate measures for the protection of clients. These measures may include a repeal of a regulatory approval, employment or contract termination, temporarily reassigning the person away from direct client duties, placing the person on leave or imposing a temporary regulatory condition limiting the person from having access to clients until any appeal filed under par. (d) is exhausted.

(d) Appeal rights. Any person who has had his or her rehabilitation approval withdrawn under par. (b) 1. or 3. may file an appeal of this decision as provided under sub. (3) (d) 3.

(e) Reporting. Any rehabilitation approval withdrawn by the approving agency or tribe which results in a bar under s. HFS 12.10 (2) shall be immediately reported to the subunit of the department responsible for collecting this information.

Note: Send reports of withdrawal of rehabilitation approval to: Office of Legal Counsel, Department of Health and Family Services, P.O. Box 7850, 1 West Wilson St., Rm 651, Madison, WI 53701-7850.

(5) SCOPE OF AGENCY OR DEPARTMENT-DESIGNATED TRIBE REHABILITATION APPROVAL. (a) Approval limit. 1. a. An agency may only grant rehabilitation approval within the scope of its regulatory authority and, unless specified otherwise by the agency in the form of limitations or conditions expressed in the written rehabilitation approval decision, the approval may apply to all types of entities, job activities or functions which come under that agency's regulatory authority.

b. A department-designated tribe may only grant rehabilitation approval within the scope of its own employment or contracting authority. A department-designated tribe does not have the authority to transfer rehabilitation approval outside of its employment or contracting authority.

c. An agency or tribe may accept upon review the rehabilitation approval granted to a person by another agency or tribe if the receiving agency or tribe determines that the crime, act or offense is not substantially related to the new job, functions or activities of the person and any limitations or conditions as may be imposed in the rehabilitation approval are able to be met.

2. An entity may, within the scope of a rehabilitation approval, accept for employment or contracting a person who received rehabilitation approval from an agency or department-designated tribe and whose crimes, act or offenses are not substantially related to the person's new job, functions or activities and any limitations or conditions as may have been imposed in the rehabilitation approval are able to be met. An entity that receives a person with a rehabilitation approval shall keep a current copy of the approval on file.

Note: Examples of the above may include but are not limited to: A rehabilitation approval received from a county or child-placing agency to be a foster parent is not transferrable to another county or child-placing agency unless approved by the other county or child-placing agency. 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 no limitations or conditions were included in the department's rehabilitation approval. 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. A rehabilitation approval is not transferable from a group day care center to a family day care center if there are limits or conditions in the department's rehabilitation approval, but a rehabilitation approval is transferable from one department-regulated child care residential setting to another as long as no limitations or conditions are placed in the department's rehabilitation approval.

(b) Applicant request to transfer rehabilitation approval. 1. Upon receiving notification on the department's background information form that an applicant for regulatory approval, employment or a contract or a prospective nonclient resident has had a rehabilitation review under sub. (3), the agency, entity or tribe shall request from the rehabilitation review agency or designated tribe a copy of the rehabilitation decision. If the decision of the rehabilitation review agency was to issue a rehabilitation approval, the agency, entity or tribe shall determine whether the approval is acceptable for transferring the rehabilitation approval to a new or different regulatory approval, job function or activity or nonclient residency for which the applicant is now applying.

2. Before transferring a rehabilitation approval under subd. 1., an agency, entity or tribe shall verify with the department or tribe whether a prospective entity, job or contract applicant or prospective nonclient resident has ever had a rehabilitation review and, if so, the date and status of that review and shall establish whether any new reason exists under sub. (2) (a) to request a rehabilitation review.

3. If the decision of the rehabilitation review agency or department-designated tribe was to deny rehabilitation transfer approval under subd. 1., the agency, entity or tribe shall determine whether the applicant for regulatory approval, a job or a contract or the prospective nonclient resident is eligible under sub. (2) (a) to seek another rehabilitation review and shall so inform the applicant or nonclient resident.

SECTION 12. HFS 12.20 (1) (b) (intro.) and (2) (a) 1., 2.a. and 3., as created by emergency order effective October 1, 1998, are amended to read:

HFS 12.20 (1) (b) (intro.) Each entity shall have on file, except as otherwise provided under s. HFS 12.21 (1) (b) 3. and for subd. 2. as provided under sub. (2) (b) 1., a completed background information form ~~and on file~~ and ~~an one~~ updated ~~one~~ every 4 years for the following:

(2) (a) 1. Background information evaluation. 1. An agency or an entity upon review of the information provided on the department's background information form, shall comply as applicable with the provisions under s. HFS 12.10 (1) (a) and (b) and s. HFS 12.11 (1), ~~and (2), and (3) and (5).~~

2. a. If upon review of a person's completed background information form and any other information that may be available, an entity, except as otherwise provided under s. HFS 12.21 (1) (b) 3., finds that none of the items under s. HFS 12.10 (2) apply, the person has not committed a crime, act or offense identified under s. HFS 12.11 (1) and (2) or as otherwise may be applied under sub. (3), an entity may employ or contract with a person, or a child-placing agency as provided for under subpar. d., may license a person as a foster home or treatment foster home provider or make a preadoptive placement of a child for not more than 60 days pending receipt and review of the information required under s. HFS 12.21 (1) (b) 1. a., and as applicable, information obtained either by the department or a school board for a day care program under s. HFS 12.21 (1) (a) 3. in order to determine compliance with s. HFS 12.10 (2) and s. HFS 12.11 (1) and (2) and, as may apply, under s. HFS 12.11 (3).

3. Where ~~less serious~~ crimes, acts or offenses of lesser significance under s. HFS 12.11 (5) are indicated on the person's background information form ~~under s. HFS 12.11 (5),~~ the agency or entity shall ensure that appropriate ~~that~~ precautionary measures are taken to protect clients.

SECTION 13. HFS 12.21 (1) (a) 1. (intro.), as created by emergency order effective October 1, 1998, is amended to read:

HFS 12.21 (1) INFORMATION GATHERING. (a) Agency responsibilities.
1. (intro.) Subject to subds. 2. and 3. and par. (c), the department, a county department, a child-placing agency or a school board shall obtain all of the following information with respect to a person specified under s. HFS 12.10 (1) (a) and a nonclient resident or prospective nonclient resident specified under s. HFS 12.10 (1) (b):

SECTION 14. HFS 12.21 (1) (b) 3. is created to read:

HFS 12.21 (1) (b) 3. a. An entity may enter into, and shall retain on file, an agreement or contract with any temporary employment agency identified under subd. 2. a. or with any college or university, including any vocational or technical college or school, to have the temporary employment agency, college, university or school retain background information forms under s. HFS 12.20 (1) (b) completed by students and background checks completed under sub. (1) (a) on students who, as part of their curriculum, must participate in clinical or practicum experiences at the entity.

b. The entity must have from the temporary employment agency or from the university, college or technical school or college and retain on file, a letter from the agency or school indicating the name or names as applicable of the temporary employees or students and stating that these individuals have been screened and have no backgrounds which would bar them from the entity in accordance with the provisions of this chapter.

SECTION 15. HFS 12.21 (1) (e), as created by emergency order effective October 1, 1998, is amended to read:

HFS 12.21 (1) (e)) Armed forces records search. If a person who is the subject of a search under par. (a) 1. or par. (b) 1. a. was 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 ~~dishonorable or a general discharge~~ other than honorable, information on the nature and circumstances of the discharge shall be obtained.

SECTION 16. Appendix A of chapter HFS 12, as repealed and recreated by emergency order effective December 12, 1998, is repealed and recreated to read:

**APPENDIX A
CRIMES LIST
February 1999**

This document contains a list of Wisconsin crimes current as of Sept. 16, 1998. THE LIST IS NOT EXHAUSTIVE. The statute numbers have been provided on this table for ease in identifying crimes. Unless otherwise indicated, the crimes listed have been determined by the Department of Health and Family Services to be "substantially related" to positions covered by the Caregiver Law, secs. 48.685 and 50.065, Stats.

Crimes also charged under Ch. 939, Wis. Stats., are to be treated as provided for the companion crime, unless otherwise indicated. For example, secs. 939.05, 943.10(2) (Party to the crime, Burglary while armed) would be in the "bar with rehab" category because the list provides that "Burglary while Armed" is in that category. However, secs. 939.32, 940.01 (Attempted 1st Degree Intentional Homicide) would be in the "bar with rehab" category rather than in the "permanent bar" category because there is a special condition or comment that so indicates.

If a person has been convicted of a crime in another state or jurisdiction, the entity or regulatory agency must locate on the table below the Wisconsin crime which is identical or most similar to the crime for which the person was convicted and apply the consequence identified. This instruction also applies if the person was convicted in Wisconsin, but the statute number or crime title has been changed or amended.

Notwithstanding sec. 111.335, Wis. Stats., secs. 48.685(5m) and 50.065(5m), Wis. Stats., permit a regulatory agency to deny regulatory approval or an entity to refuse to, employ, contract with, or permit to reside at the entity a person whom the regulatory agency or entity determines has been convicted of a crime that is "substantially related" to the care of a client. The agency or entity may review a conviction to make that determination when: (a) The person has been convicted in Wisconsin or another state or jurisdiction of any crime that is not listed in this appendix; or (b) The person has been convicted of a crime that is listed in this appendix as being in the "substantially related" category.

Under the Caregiver Law, other acts or offenses may carry regulatory or employment consequences. Persons with findings by a governmental agency of neglect or abuse of a client, or misappropriation of a client's property; persons with findings by a governmental agency of child abuse or neglect; and persons with current limitations on their professional credentials must demonstrate to the regulatory agency that they are rehabilitated.

KEY:

(F)	=	Applies if Felony
(M)	=	Applies if Misdemeanor
sp	=	Spouse was the victim in the offense
5 yrs	=	5 year ban from time crime committed, then must show rehabilitation
F	=	Conviction acts as bar (as indicated) for Foster Homes / Treatment Foster Homes
Shaded cell	=	Bar or limitation applies to all programs (unless otherwise indicated)
*	=	Special condition applies

ATTACHMENT TO CH. HFS 12, WIS. ADMIN. CODE - CRIMES LIST (CONT'D)

Wis. Stats.	Crime	Category I	Category II	Category III	Comment or Conditions
		Permanent Bar	Bar w/ rehab.	Lesser sanctions	

CRIMES LIST AS APPLIED TO EMTs

Emergency medical technicians (EMTs) are covered as follows:

- "Permanent bar" crimes apply to licensed EMTs.
- An EMT must demonstrate rehabilitation (see, s. HFS 12.12, Wisconsin Administrative Code) when there has been a finding by a governmental agency of abuse or neglect of a client or child, or misappropriation of a client's property.
- All other criminal convictions are subject to the "substantially related" analysis by the licensing agency and the employer.

CRIMES LIST AS APPLIED TO ALL OTHER ENTITIES/COVERED PERSONS

**Chapter 346
Rules of the Road**

Wis. Stats.	Crime	Category I	Category II	Category III	Comment or Conditions
		Permanent Bar	Bar w/ rehab.	Lesser sanctions	
346.63	OWI (F)				*Bar w/ rehab if duties of position involve transporting clients and if date of conviction is within 5 years of request for review; otherwise offense is in the "substantially related" category.
	• (F) If w/ passenger < 16		*		
	• (F) If 3rd or greater offense		*		
346.62(4)	Reckless Driving – cause great bodily harm. (F)	F			

KEY:

- (F) = Applies if Felony
- (M) = Applies if Misdemeanor
- sp = Spouse was the victim in the offense
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- F = Conviction acts as bar (as indicated) for Foster Homes / Treatment Foster Homes
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- * = Special condition applies

ATTACHMENT TO CH. HFS 12, WIS. ADMIN. CODE - CRIMES LIST (CONT'D)

Wis. Stats.	Crime	Category I	Category II	Category III	Comment or Conditions
		Permanent Bar	Bar w/ rehab	Lesser sanctions	
346.67	Hit & Run - causing great bodily harm or death. (F)		*		*Bar w/ rehab if duties of position involve transporting clients and if date of conviction is within 5 years of request for review; otherwise offense is in the "substantially related" category.
346.67	Hit & Run - bodily harm or property damage. (M)		*		*Bar w/ rehab if duties of position involve transporting clients and if date of conviction is within 5 years of request for review; otherwise offense is in the "substantially related" category.

**Chapter 940
Crimes Against Life and Bodily Security**

Wis. Stats.	Crime	Category I	Category II	Category III	Comments or Conditions or Conditions
		Permanent Bar	Bar w/ rehab	Lesser sanctions	
940.01	1st ^o Intentional homicide		*		*Bar w/ Rehab if conviction is for attempted crime (sec. 939.32, Wis. Stats.).
940.02	1st ^o Reckless Homicide	F			
940.03	Felony Murder	F			
940.05	2nd ^o Intentional homicide	F			
940.06	2nd ^o Reckless Homicide	F			
940.07	Homicide by negligent control of a vicious animal.				
940.08	Homicide by negligent handling of dangerous weapon, explosives or fire.	F			
940.09	Homicide by intoxicated use of vehicle or firearm.				
940.12	Assisting suicide.				

KEY:

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- F = Conviction acts as bar (as indicated) for Foster Homes / Treatment Foster Homes
- Shaded cell = Bar or limitation applies to all programs (unless otherwise indicated)
- * = Special condition applies

ATTACHMENT TO CH. HFS 12, WIS. ADMIN. CODE - CRIMES LIST (CONT'D)

Wis. Stats.	Crime	Category I	Category II	Category III	Comment or Conditions
		Permanent Bar	Bar w/ rehab.	Lesser sanctions	
940.19 (1)	Battery. (M)		*		*Reg. Agency reviews if offense was "domestic" or if date of conviction is within 5 years of request for review; otherwise offense is in the "substantially related" category.
940.19 (2) - (6)	Battery. (F)	F- sp / 5yrs			
940.195	Battery to an unborn child.		*		*Reg. Agency reviews if offense was "domestic" or if date of conviction is within 5 years of request for review; otherwise offense is in the "substantially related" category.
940.20	Battery – Special Circumstances.	F - sp	*		*Reg. Agency reviews if offense was "domestic" or if date of conviction is within 5 years of request for review; otherwise offense is in the "substantially related" category.
940.201	Battery or threat to witnesses.		*		*Reg. Agency reviews if offense was "domestic" or if date of conviction is within 5 years of request for review; otherwise offense is in the "substantially related" category.
940.203	Battery or threat to judge.	F – 5 years	*		*Reg. Agency reviews if date of conviction is within 5 years of request for review; otherwise offense is in the "substantially related" category.
940.205	Battery or threat to a Dept. of Revenue Employee.	F – 5 years	*		*Reg. Agency reviews if date of conviction is within 5 years of request for review; otherwise offense is in the "substantially related" category.
940.207	Battery or threat to a Dept. of Commerce or DIHLR employee.	F – 5 years	*		*Reg. Agency reviews if date of conviction is within 5 years of request for review; otherwise offense is in the "substantially related" category.

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- * = Special condition applies

ATTACHMENT TO CH. HFS 12, WIS. ADMIN. CODE - CRIMES LIST (CONT'D)

Wis. Stats.	Crime	Category I	Category II	Category III	Comment or Conditions
		Permanent Bar	Bar w/ rehab	Lesser sanctions	
940.21	Mayhem	F	*		*Reg. Agency reviews if offense was "domestic" or if date of conviction is within 10 years of request for review; otherwise offense is in the "substantially related" category.
940.22(2)	Sexual exploitation by therapist – sexual contact.				
940.22(3)	Sexual exploitation by therapist – duty to report.				
940.225(1)	1st° sexual assault		*		*Bar w/ Rehab if conviction is for attempted crime (sec. 939.32, Wis. Stats.).
940.225(2)	2nd° sexual assault	F			
940.225(3)	3rd° sexual assault	F			
940.225 (3m)	4th° sexual assault				
940.23	Reckless Injury	F	*		*Reg. Agency reviews if date of conviction is within 5 years of request for review; otherwise offense is in the "substantially related" category.
940.25	Injury by intoxicated use of a vehicle		*		*Bar w Rehab if duties of job involve transporting clients and if date of conviction is within 5 years of request for review; otherwise offense is in the "substantially related" category.
940.285 (2)(b)1 or 2	Abuse of vulnerable adults (F)		*		*Bar w/ Rehab if conviction is for attempted crime (sec. 939.32, Wis. Stats.).
940.285 (2)(b)3, 4, or 5	Abuse of vulnerable adults (F or M)				
940.29	Abuse of residents of a penal facility.				
940.291	Law enforcement officer – failure to render aid. (M)		*		*Reg. Agency reviews if date of conviction is within 5 years of request for review; otherwise offense is in the "substantially related" category..

KEY:

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- sp = Spouse was the victim in the offense
- 5 yrs = 5 year ban from time crime committed, then must show rehabilitation
- F = Conviction acts as bar (as indicated) for Foster Homes / Treatment Foster Homes
- Shaded cell = Bar or limitation applies to all programs (unless otherwise indicated)
- * = Special condition applies

ATTACHMENT TO CH. HFS 12, WIS. ADMIN. CODE - CRIMES LIST (CONT'D)

Wis. Stats.	Crime	Category I	Category II	Category III	Comment or Conditions
		Permanent Bar	Bar w/ rehab.	Lesser sanctions	
940.295	Abuse/neglect of patients & residents. (F)				*Bar w/ Rehab if conviction is for attempted crime (sec. 939.32, Wis. Stats.).
940.295	Abuse/neglect of patients & residents. (M)				
940.30	False imprisonment.		*		*Reg. Agency reviews if offense is "domestic" or if date of conviction is within 10 years of request for review; otherwise offense is in the "substantially related" category.
940.305	Taking hostages.	F			
940.31	Kidnapping.	F			
940.32	Stalking.				
940.43	Intimidation of witnesses		*		*Reg. Agency reviews if offense is "domestic" or if date of conviction is within 5 years of request for review; otherwise offense is in the "substantially related" category.
940.45	Intimidation of victims (F or M)		*		*Reg. Agency reviews if offense is "domestic" or if date of conviction is within 5 years of request for review; otherwise offense is in the "substantially related" category.

**Chapter 941
Crimes Against Public Health and Safety**

Wis. Stats.	Crime	Category I	Category II	Category III	Comments or Conditions
		Permanent Bar	Bar w/ rehab.	Lesser sanctions	
941.20(1)	Endangering safety - dangerous weapon. (M)		*		*Reg. Agency reviews if offense is "domestic" or if date of conviction is with 5 years of request for review; otherwise offense is in the "substantially related" category.

KEY:

- (F) = Applies if Felony
- (M) = Applies if Misdemeanor
- sp = Spouse was the victim in the offense
- 5 yrs = 5 year ban from time crime committed, then must show rehabilitation
- F = Conviction acts as bar (as indicated) for Foster Homes / Treatment Foster Homes
- Shaded cell = Bar or limitation applies to all programs (unless otherwise indicated)
- * = Special condition applies

ATTACHMENT TO CH. HFS 12, WIS. ADMIN. CODE - CRIMES LIST (CONT'D)

Wis. Stats.	Crime	Category I	Category II	Category III	Comment or Conditions
		Permanent Bar	Bar w/ rehab.	Lesser sanctions	
941.20(2) or (3)	Endangers safety –dangerous weapon	F	*		*Reg. Agency reviews if offense is "domestic" or if date of conviction is within 5 years of request for review; entity does all others.
941.21	Disarming a peace officer.	F			
941.30	Recklessly endangering safety.		*		*Reg. Agency reviews if date of conviction is within 5 years of request for review; entity does all others
941.32	Administering dangerous or stupefying drug.		*		*Reg. Agency reviews if date of conviction is within 5 years of request for review; otherwise offense is in the "substantially related" category.
941.38	Criminal gang member solicitation and contact		*		*"Bar w/ rehab" if job duties include contact with children; otherwise offense is in the "substantially related" category.

**Chapter 942
Crimes Against Reputation and Civil Liberty**

Wis. Stats.	Crime	Category I	Category II	Category III	Comments or Conditions
		Permanent Bar	Bar w/ rehab.	Lesser sanctions	
942.08	Invasion of privacy		*		*Reg. Agency reviews conviction if occurred within 5 years of request for review; otherwise offense is in the "substantially related" category.

KEY:

- (F) = Applies if Felony
- (M) = Applies if Misdemeanor
- sp = Spouse was the victim in the offense
- 5 yrs = 5 year ban from time crime committed, then must show rehabilitation
- F = Conviction acts as bar (as indicated) for Foster Homes / Treatment Foster Homes
- Shaded cell = Bar or limitation applies to all programs (unless otherwise indicated)
- * = Special condition applies

ATTACHMENT TO CH. HFS 12, WIS. ADMIN. CODE - CRIMES LIST (CONT'D)

Wis. Stats.	Crime	Category I	Category II	Category III	Comment or Conditions
		Permanent Bar	Bar w/ rehab.	Lesser sanctions	

**Chapter 943
Crimes Against Property**

Wis. Stats.	Crime	Category I	Category II	Category III	Comments or Conditions
		Permanent Bar	Bar w/ rehab.	Lesser sanctions	
943.10 (1)	Burglary		*		*Reg. Agency reviews if date of conviction is within 5 years of request for review; otherwise offense is in the "substantially related" category..
943.10 (2)	Burglary while armed.	F	*		*Reg. Agency reviews if date of conviction is within 10 years of request for review; otherwise offense is in the "substantially related" category.
943.20	Theft		*		*"Bar w/ rehab" if the person's duties bring person into contact with a client's property or fund or if date of conviction is within 5 years of the request for review; otherwise offense is in the "substantially related" category.
943.201	Misappropriation of personal identifying information or documents.		*		*"Bar w/ rehab" category if the person's duties bring person into contact with a client's property or funds or if date of conviction is within 5 years of the request for review; otherwise offense is in the "substantially related" category.
943.23(1g), (1m) or (1r)	OMVWOC	F	*		*Reg. Agency to review if date of conviction is within 10 years of request for review; otherwise offense is in the "substantially related" category.

KEY:

- (F) = Applies if Felony
- (M) = Applies if Misdemeanor
- sp = Spouse was the victim in the offense
- 5 yrs = 5 year ban from time crime committed, then must show rehabilitation
- F = Conviction acts as bar (as indicated) for Foster Homes / Treatment Foster Homes
- Shaded cell = Bar or limitation applies to all programs (unless otherwise indicated)
- * = Special condition applies

ATTACHMENT TO CH. HFS 12, WIS. ADMIN. CODE - CRIMES LIST (CONT'D)

Wis. Stats.	Crime	Category I	Category II	Category III	Comment or Conditions
		Permanent Bar	Bar w/ rehab.	Lesser sanctions	
943.32 (1)	Robbery (F)		*		*Reg. Agency to review if date of conviction is within 5 years of request for review; otherwise offense is in the "substantially related" category.
943.32 (2)	Robbery w/ dangerous weapon.	F	*		*Reg. Agency to review if date of conviction is within 10 years of request for review; otherwise offense is in the "substantially related" category.
943.50	Retail theft		*		*"Bar w/ rehab" if the person's duties bring person into contact with a client's property or funds and if date of conviction is within 5 years of the request for review; otherwise offense is in the "substantially related" category.

**Chapter 944
Crimes Against Sexual Morality**

Wis. Stats.	Crime	Category I	Category II	Category III	Comments or Conditions
		Permanent Bar	Bar w/ rehab.	Lesser sanctions	
944.20	Lewd & lascivious behavior		*		*Reg. Agency reviews if date of conviction is within 10 years of request for review; otherwise offense is in the "substantially related" category.
944.205	Photographs, motion pictures, videotapes, or other visual representations showing nudity.		*		*Reg. Agency reviews if date of conviction is within 5 years of request for review; otherwise offense is in the "substantially related" category.

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- sp = Spouse was the victim in the offense
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ATTACHMENT TO CH. HFS 12, WIS. ADMIN. CODE - CRIMES LIST (CONT'D)

Wis. Stats.	Crime	Category I	Category II	Category III	Comment or Conditions
		Permanent Bar	Bar w/ rehab.	Lesser sanctions	

**Chapter 946
Crimes Against Government and Its Administration**

Wis. Stats.	Crime	Category I	Category II	Category III	Comments or Conditions
		Permanent Bar	Bar w/ rehab.	Lesser sanctions	
946.43	Assaults by prisoners		*		*Reg. Agency reviews if date of conviction is within 5 years of request for review; otherwise offense is in the "substantially related" category.
946.74(1)	Aiding escape from mental institution. (M)		*		*Reg. Agency reviews if date of conviction is within 5 years of request for review; otherwise offense is in the "substantially related" category.
946.74(2)	Aid escape from mental institution (F)		*		*Reg. Agency reviews if date of conviction is within 5 years of request for review; otherwise offense is in the "substantially related" category.

**Chapter 947
Crimes Against Public Peace, Order and Other Interests**

Wis. Stats.	Crime	Category I	Category II	Category III	Comments or Conditions
		Permanent Bar	Bar w/ rehab.	Lesser sanctions	
947.013	Harassment (M or F).		*		*Reg. Agency reviews if offense is "domestic" or if date of conviction is within 5 years of request for review; otherwise offense is in the "substantially related" category.

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ATTACHMENT TO CH. HFS 12, WIS. ADMIN. CODE - CRIMES LIST (CONT'D)

Wis. Stats.	Crime	Category I	Category II	Category III	Comment or Conditions
		Permanent Bar	Bar w/ rehab	Lesser sanctions	

**Chapter 948
Crimes Against Children**

Wis. Stats.	Crime	Category I	Category II	Category III	Comments or Conditions
		Permanent Bar	Bar w/ rehab	Lesser sanctions	
948.02(1)	1st ^o sexual assault of a child.		*		*Bar w/ Rehab if conviction is for attempted crime (sec. 939.32, Wis. Stats.).
948.02(2)	2nd ^o sexual assault of a child.	F			
	<ul style="list-style-type: none"> if person was, at the time of assault, more than 4 years older than the child. 		*		*Bar w/ Rehab if conviction is for attempted crime (sec. 939.32, Wis. Stats.).
948.02(3)	Sexual Assault of a Child - Failure to Act	F			
948.02(3m)	Sexual Assault of a Child - Penalty enhancement; sexual assault by certain persons	F			
948.025	Repeated acts of sexual assault of same child.	F			
	<ul style="list-style-type: none"> if child has not attained the age of 13 		*		*Bar w/ Rehab if conviction is for attempted crime (sec. 939.32, Wis. Stats.).
	<ul style="list-style-type: none"> if child was over 13 but under 16 and the person was more than 4 years older. 		*		*Bar w/ Rehab if conviction is for attempted crime (sec. 939.32, Wis. Stats.).
948.03 (2)(a)	Physical Abuse of a child – Intentional - Cause Great Bodily Harm		*		*Bar w/ Rehab if conviction is for attempted crime (sec. 939.32, Wis. Stats.).
948.03 (2)(b) or (c)	Physical Abuse of a child – Intentional - Cause Bodily Harm	F			
948.03(3)	Physical abuse of a child – reckless	F			
948.03(4)	Physical abuse of a child – failure to act.	F			

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ATTACHMENT TO CH. HFS 12, WIS. ADMIN. CODE - CRIMES LIST (CONT'D)

Wis. Stats.	Crime	Category I	Category II	Category III	Comment or Conditions
		Permanent Bar	Bar w/ rehab.	Lesser sanctions	
948.04	Causing mental harm to a child	F			
948.05	Sexual exploitation of a child.	F	*		*"Bar w/ rehab" except if Foster Care or unless person has access to children served by entity.
948.055	Causing a child to view or listen to sexual activity.	F	*		*"Bar w/ rehab" except Foster Care or unless person has access to children served by entity.
948.06	Incest with a child.	F	*		*"Bar w/ rehab" except Foster Care or unless person has access to children served by entity.
948.07	Child enticement	F	*		*"Bar w/ rehab" except Foster Care or unless person has access to children served by entity.
948.08	Soliciting a child for prostitution.	F	*		*"Bar w/ rehab" except Foster Care or unless person has access to children served by entity.
948.09	Sexual intercourse with a child age 16 or older.		*		*Reg. Agency reviews if date of conviction is within 10 years of request for review or if person has access to children served by the entity; otherwise offense is in the "substantially related" category.
948.095	Sexual assault of student by school staff.	F	*		*Reg. Agency reviews if date of conviction is within 10 years of request for review or if person has access to children served by entity; otherwise offense is in the "substantially related" category.
948.10	Exposing genitals or pubic area.				
948.11 (2)(a) or (am)	Exposing child to harmful material or harmful descriptions or narrations. (F)	F	*		*"Bar w/ rehab" except Foster Care or unless person has access to children served by entity.
948.11 (2)(b)	Exposing child to harmful material or harmful descriptions or narrations. (M)		*		*Reg. Agency reviews if date of conviction is within 5 years of request for review or if person has access to children served by entity; otherwise offense is in the "substantially related" category.

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ATTACHMENT TO CH. HFS 12, WIS. ADMIN. CODE - CRIMES LIST (CONT'D)

Wis. Stats.	Crime	Category I	Category II	Category III	Comment or Conditions
		Permanent Bar	Bar w/ rehab.	Lesser sanctions	
948.12	Possession of child pornography.	F	*		**"Bar w/ rehab" except Foster Care or unless person has access to children served by entity. Reg. Agency reviews if date of conviction is within 10 years of request for review; otherwise offense is in the "substantially related" category.
948.13	Child sex offender working with children.	F	*		**"Bar w/ rehab" except Foster Care or unless person has access to children served by entity. Reg. Agency reviews if date of conviction is within 10 years of request for review; otherwise offense is in the "substantially related" category.
948.20	Abandonment of a child.	F	*		*Reg. Agency reviews if date of conviction is within 5 years of request for review; otherwise offense is in the "substantially related" category.
948.21(1)	Neglect a child – result in death. (F)	F			
948.21(1)	Neglecting a child. (M)				
948.22	Failure to support. (F)	F			
948.23	Concealing death of child.	F			
948.24	Unauthorized placement for adoption.	F			
948.30	Abduction of another's child; constructive custody.	F	*		**"Bar w/ rehab" category for all but Foster Care or unless person has access to children served by entity.
948.31	Interference with custody by parent or others.	F			

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F	= Conviction acts as bar (as indicated) for Foster Homes / Treatment Foster Homes
Shaded cell	= Bar or limitation applies to all programs (unless otherwise indicated)
*	= Special condition applies

ATTACHMENT TO CH. HFS 12, WIS. ADMIN. CODE - CRIMES LIST (CONT'D)

Wis. Stats.	Crime	Category I	Category II	Category III	Comment or Conditions
		Permanent Bar	Bar w/ rehab	Lesser sanctions	
948.35	Solicitation of a child to commit a felony.	F	*		*"Bar w/ rehab" for all but Foster Care. Reg. Agency reviews if conviction is within 5 years of request for review or if person has access to children served by entity; otherwise offense is in the "substantially related" category.
948.36	Use of a child to commit a class A felony.	F	*		*Reg. Agency reviews if conviction occurs within 5 years of request for review or if person has access to children served by entity; otherwise offense is in the "substantially related" category..
948.40	Contributing to the delinquency of a minor. (F)	F	*		*Reg. Agency reviews if conviction occurs within 5 years of request for review or if person has access to children served by entity; otherwise offense is in the "substantially related" category.
948.40	Contributing to the delinquency of a minor. (M)		*		*Reg. Agency reviews if conviction occurs within 5 years of request for review or if person has access to children served by entity; otherwise offense is in the "substantially related" category.
948.51	Hazing (F)	F	*		*Reg. Agency reviews if conviction occurs within 5 years of request for review or if person has access to children served by entity; otherwise offense is in the "substantially related" category.
948.60	Possession of a dangerous weapon by a person under 18. (F)	F			
948.605(3)	Gun-free school zones; Discharge of firearm in a school zone. (F)	F			
948.61	Dangerous weapons other than firearms on school premises. (F).	F			
948.62	Receiving stolen property from a child. (F)	F			

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ATTACHMENT TO CH. HFS 12, WIS. ADMIN. CODE - CRIMES LIST (CONT'D)

Wis. Stats.	Crime	Category I	Category II	Category III	Comment or Conditions
		Permanent Bar	Bar w/ rehab.	Lesser sanctions	

All other ch. 948 Crimes that are felonies	F				All ch. 948 crimes that are felonies are "permanent bar" offenses for Foster Care.
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**Chapter 961
Uniform Controlled Substances Act
(Previously Chapter 161)**

Wis. Stats.	Crime	Category I	Category II	Category III	Comments or Conditions
		Permanent Bar	Bar w/ rehab.	Lesser sanctions	
941.41(1)	Manufacture, distribution or delivery. (F)	F- 5yrs			
941.41 (1m)	Possession with intent to manufacture, distribute, or deliver. (F)	F- 5yrs			
941.41 (3g)	Possession (F)	F- 5yrs			
961.43 (1)(a)	Acquire or obtain possession of controlled substances by fraud, misrepresentation, or forgery, deception, or subterfuge. (F)	F- 5yrs			
961.43 (1)(b)	To possess/make a counterfeit substance or to duplicate the appearance, packaging, form or label of a controlled substance. (F)	F- 5yrs			
961.455	Using a child for illegal drug distribution or manufacturing purposes. (F)	F- 5yrs	*		*"Bar w/ rehab" if person has access to children served by entity; for all other situations, offense is in "substantially related" category.
961.46	Distribution to persons under 18. (F)	F- 5yrs	*		*"Bar w/ rehab" if person has access to children served by entity; for all other situations, offense is in "substantially related" category.

KEY:

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- sp = Spouse was the victim in the offense
- 5 yrs = 5 year ban from time crime committed, then must show rehabilitation
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ATTACHMENT TO CH. HFS 12, WIS. ADMIN. CODE - CRIMES LIST (CONT'D)

Wis. Stats.	Crime	Category I	Category II	Category III	Comment or Conditions
		Permanent Bar	Bar w/ rehab.	Lesser sanctions	
961.46	Distribution to persons under 18. (M)		*		*"Bar w/ rehab" if person has access to children served by entity; for all other situations, offense is in "substantially related" category.
961.465	Distribution to prisoners.	F- 5yrs			
961.49	Distribution of or possession with intent to deliver at or near certain places.	F- 5yrs			
961.492	Distribution of or possession with intent to deliver on public transit. (F)	F- 5yrs			
961.575	Delivery of drug paraphernalia to a minor. (M)		*		*"Bar w/ rehab" if person has access to children served by entity; for all other situations, offense is in "substantially related" category.
All other 961 offenses that are Felonies		F- 5 yrs			

KEY:

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SECTION 17. HFS 13.03 (1), as created by emergency order effective October 1, 1998, is repealed and recreated to read:

HFS 13.03 (1) (a) "Abuse" includes neglect and mistreatment and means any of the following when contrary to the entity's policies and procedures or when not a part of the client's treatment plan:

1. An act, or repeated acts, an omission or a course of conduct by a caregiver or nonclient resident, including but not limited to restraint, isolation or confinement, that, when done intentionally, does any of the following:

a. Causes or could reasonably be expected to cause pain or injury to a client or the death of a client.

b. Substantially disregards a client's rights under either ch. 50 or 51, Stats., or a caregiver's duties and obligations to a client.

c. Causes or could reasonably be expected to cause mental or emotional damage to a client, including harm to the client's psychological or intellectual functioning that is exhibited by anxiety, depression, withdrawal, regression, outward aggressive behavior, agitation, fear of harm or death, or a combination of these behaviors. This subdivision paragraph does not apply to permissible restraint, isolation or confinement implemented by order of a court or other lawful authority.

d. Causes or could reasonably be expected to cause harm to the physical or mental health of a client through substantial carelessness or negligence.

2. An act or acts of sexual intercourse or sexual contact under s. 940.225, Stats., by a caregiver and involving a client.

3. The forcible administration of medication to or the performance of psychosurgery, electroconvulsive therapy or experimental research on a client with the knowledge that no lawful authority exists for the administration or performance.

4. A course of conduct or repeated acts by a caregiver which serve no legitimate purpose and which, when done with intent to harass, intimidate, humiliate, threaten or frighten a client, causes or could reasonably be expected to cause the client to be harassed, intimidated, threatened or frightened.

5. An act that does not constitute self-defense as defined in s. 939.48, Stats.

(b) "Abuse" does not include acts of mere inefficiency, unsatisfactory conduct or failure in good performance as the result of inability, incapacity, inadvertency or ordinary negligence in isolated instances, or good faith errors in judgment or discretion.

SECTION 18. HFS 13.03 (2), as created by emergency order effective October 1, 1998, is repealed.

SECTION 19. HFS 13.03 (2) is created to read:

HFS 13.03 (2) "Access," when used in reference to a person's access to clients, means that in the course of performing the person's expected duties for or functions with the entity, or as a nonclient resident of the entity, the person has or may have direct, regular contact with clients served by the entity.

SECTION 20. HFS 13.03 (3), as created by emergency order effective October 1, 1998, is repealed and recreated to read:

HFS 13.03 (3) (a) "Caregiver" means a person who is all of the following:

1. A person who has received regulatory approval from an agency or is employed by or under contract with an entity.
2. A person who has access to the entity's clients.
3. A person who is under the entity's control.

(b) "Caregiver" does not include any of the following:

1. A person who performs solely clerical, administrative, maintenance or other support functions for the entity and is not expected to have regular, direct contact with clients or the personal property of clients.
2. A person who is employed by or under contract with an entity to provide infrequent or occasional services, such as delivering items to the facility, equipment maintenance, groundskeeping, construction or other similar services not directly related to the care of a client.

SECTION 21. HFS 13.03 (6m) is created to read:

HFS 13.03 (6m) "Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose.

SECTION 22. HFS 13.03 (11), as created by emergency order effective October 1, 1998, is repealed.

SECTION 23. HFS 13.03 (12) and (13), as created by emergency order effective October 1, 1998, are renumbered 13.03 (11) and (12).

SECTION 24. HFS 13.03 (13) is created to read:

HFS 13.03 (13) "Nonclient resident" means a person 12 years of age or older who is not a client of an entity but who resides at the entity and is expected to have access to entity clients.

SECTION 25. HFS 13.03 (14), as created by emergency order effective October 1, 1998, is repealed.

SECTION 26. HFS 13.03 (17), as created by emergency order effective October 1, 1998, is repealed and recreated to read:

HFS 13.03 (17) "Under the entity's control" means a person employed by or under contract with the entity for whom the entity does 2 or more of the following:

- (a) Determines whether the person may provide care, treatment, support or similar services to clients served by the entity.
- (b) Directs the policies or procedures the person must follow in performing his or her duties as a caregiver.
- (c) Directs the conditions under which the person performs his or her duties as a caregiver.
- (d) Directs the work assignments or tasks performed by the caregiver.
- (e) Determines the person's work schedule.
- (f) Supervises or evaluates the person's work or job performance, including imposing discipline or awarding performance awards.
- (g) Determines the compensation the person received for performing his or her duties as a caregiver.

SECTION 27. HFS 13.05 (1) (f), as created by emergency order effective October 1, 1998, is amended to read:

HFS 13.05 (1) (f) "Subject of the report" means the person against whom an allegation of misconduct is made or, ~~if notice of appearance in the matter has been filed by an attorney~~ when an attorney files a written notice of appearance in the matter, the attorney representing the person against whom an allegation of misconduct has been made.

SECTION 28. HFS 13.05 (6) (b) 3. d. is created to read:

HFS 13.05 (6) (b) 3: d. A statement that the subject of the report may have a representative of his or her choice present when there is any contact with the department's investigators during the course of the investigation.

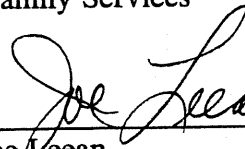
SECTION 29. HFS 13.05 (6) (c) 1. and 2. (intro.), as created by emergency order effective October 1, 1998, are amended to read:

1. 'No reasonable cause to substantiate the allegation.' If the department determines that there is no reasonable cause to substantiate the allegation, the department's written decision shall be provided to the subject of the report, the involved entity or staffing agency, if known, ~~and~~ the reporter and to other agencies as appropriate. The decision shall contain a brief description of the allegation and the investigation conducted by the department, with enumeration of the findings and conclusions. If an additional allegation was discovered during the investigation, the department's decision may include information about the additional allegation and of the department's decision regarding the additional allegation, or the department may separately inform the subject of the report of the additional allegation and of the department's decision regarding the additional allegation.

2. 'Reasonable cause to substantiate the allegation.' If the department determines there is reasonable cause to substantiate the allegation, the department's written decision shall be provided to the subject of the report, to the involved entity or staffing agency, if known, and to the reporter and to other agencies as appropriate. The decision shall contain all of the following:

The rules contained in this order shall take effect as emergency rules upon publication in the official state newspaper as provided in s. 227.24 (1) (c), Stats.

Wisconsin Department of Health
and Family Services

By: 
Joe Lekan
Secretary

Dated: February 23, 1999

SEAL:



State of Wisconsin
Department of Health and Family Services

Tommy G. Thompson, Governor
Joe Leean, Secretary

May 5, 1999

Senator Judith B. Robson
Senate Co-Chair, Joint Committee for
Review of Administrative Rules
P. O. Box 7882
Madison, WI 53707-7882

Representative Glenn Grothman
Assembly Co-Chair, Joint Committee for
Review of Administrative Rules
P. O. Box 8952
Madison, WI 53707-8952

Dear Senator Robson and Representative Grothman:

Thank you for the opportunity to appear before your committee on April 27, 1999 to request an extension of the emergency administrative rules relating to the Caregiver Background Check and Complaint Reporting and Investigation rules promulgated on October 1, 1998. During the course of our testimony, the Department expressed concerns with the Wisconsin Hospital Association proposal to change the Chapter 50 portion of the caregiver law. You asked the Department to send you a general statement of these concerns. I have attached a description of the Department's concerns, as well as background information relative to suggested new definitions of abuse and neglect, a suggested listing of offenses that would prohibit employment or licensure; the Assembly Health Committee's requests of the Department for the proposed permanent rules HFS 12 and HFS 13, and the Background Information Disclosure form. I would be happy to answer any questions you may have on these materials.

Sincerely,

John Kiesow
Executive Assistant

Attachments

I. WHA PROPOSAL: NEW OR CHANGED CHAPTER 50 PROVISIONS (5/5/99)

WHA PROPOSAL	CONCERN	DHFS RECOMMENDATION
1. No longer requires background checks of persons who live at a covered entity but who are not clients of the entity ("non-client residents").	Access to clients by non-client residents on a regular basis provides the opportunity for a person with whom DHFS has no regulatory relationship to commit misconduct.	Non-client residents should have their backgrounds checked.
2. Defines "caregivers" as employees or contractors who have "significant, regular client care responsibilities."	"Significant...care responsibilities" is an unclear term; even if clarified, direct access to clients rather than some degree of "significance" of caregiving responsibilities supplies the opportunity for committing misconduct. Current rule covers employees or contractors who have "access" to clients, and "access" is defined as "direct, regular contact" with clients.	Stay with current rule language: "Caregiver" includes all employees or contractors who have access; i.e., direct, regular contact with clients. Statute should grant rule making authority to DHFS to develop details of the process, including rehabilitation reviews, granting exemptions for persons who were not intended to be covered under the law, etc.
3. WHA proposal covers anyone "licensed, certified, or registered by DHFS to operate an entity."	Proposal is too broad / includes restaurant and other public health workers who have no access to vulnerable populations. Current statute covers the same entities if the entity provides " direct care or treatment services to clients. "	Stay with current statutory language: " direct care or treatment services to clients. "
5. Defines "contractor" as a caregiver "who can reasonably be said to be a surrogate for an employee, and excludes students."	"Surrogate for an employee" is undefined, and exemption for all students is too broad. HFS 12 covers contractors who are "caregivers" who are "under the entity's control," and who have "access" to clients.	Exclude persons whose sole duties are non-direct care , but include persons, including students, who have both non-direct care and regular direct care duties, regardless of how "significant" those duties are. Allow students to continue clinical experience while rehabilitation review is pending.
6. Includes "personal care worker agencies" and "supportive home care agencies," but excludes EMT's.	DHFS has no regulatory authority over PCW and SHC agencies unless they are licensed as home health agencies. In the past EMT's were asked to self-disclose criminal	Need statutory change to include personal care workers and supportive home care workers who are employed somewhere other than by a licensed home health agency.

I. WHA PROPOSAL: NEW OR CHANGED CHAPTER 50 PROVISIONS (5/5/99)		
WHA PROPOSAL	CONCERN	DHFS RECOMMENDATION
	<p>histories; under the caregiver law, DHFS has found several EMT's with license-prohibitive convictions who did not disclose their backgrounds.</p> <p>HFS 12 limits PCW and SHC agencies to those also licensed as home health agencies.</p>	
7. Defines "serious crime" as the crimes expressly written in current statute plus findings made by DHFS.	<p>A "finding" is not a crime.</p> <p>At a minimum, offenses that prohibit employment or licensure should include serious misconduct committed against vulnerable adults and children.</p>	Change "serious crime" to "serious offense." Expand prohibitive list to include offenses defined in HFS 12 as permanent bars, including abuse of vulnerable adults and crimes against children. (See attached list.)
8. Permits an employee to work pending receipt of the checks as long as the person is supervised.	<p>Proposal has no time frame for submitting or completing checks; persons with prohibitive backgrounds could work indefinitely.</p> <p>A person's criminal history, abuse history, and license limitation history can change often; changes that would prohibit employment should affect access to clients.</p> <p>HFS 12 allows a 60 day provisional employment period pending receipt of the checks, as long as the employee is supervised and the disclosure form indicates eligibility for work, and also requires checks to be repeated at least every four years.</p>	Maintain 60 day provisional employment period based on a "clean" disclosure form and supervision.
9. Eliminates as one of the background checks a check of previous license denials, revocations, or suspensions imposed by BQA.	Information about previous licensee performance that was poor enough to cause action against a license directly relates to protecting vulnerable clients and should be checked.	Continue to require and report via the automated Integrated Background Information System (IBIS) previous licensure actions taken against licensees.
10. Allows all employees with an offense in their background requiring	Persons who commit an offense serious enough to require rehabilitation approval	Continue requiring rehabilitation approval before a new applicant for work or licensure can begin work

I. WHA PROPOSAL: NEW OR CHANGED CHAPTER 50 PROVISIONS (5/5/99)		
WHA PROPOSAL	CONCERN	DHFS RECOMMENDATION
rehabilitation approval to continue working pending the rehabilitation decision, with no time frames expressed.	should not be able to work indefinitely without pursuing a rehabilitation approval, but those who have "clean" records when hired who subsequently develop unsatisfactory backgrounds should have some time to pursue a rehabilitation decision.	<p>and before a person newly convicted of a prohibitive offense can continue working.</p> <p>With the smaller number of offenses requiring rehab. review, require employer to request rehabilitation review on potential employee's behalf.</p> <p>Continue to allow persons who had an employment prohibitive offense before 10/1/98, but who were already working before 10/1/98 to continue working pending the rehabilitation decision if they file rehab. application by 10/1/99.</p>
11. Both the WHA proposal and current law require good faith efforts to check the criminal background of a person who has lived outside Wisconsin within the last three years.	Some states will not provide criminal records, and checks are only required in states where a person has admitted to living.	Allow check of National Crime Information Center (NCIC) to be acceptable for out-of-state checks. An NCIC check could find criminal records in more states than the person discloses.
12. Extends effective date for checking existing employees and contractors another year, to October 1, 2000.	Under current law, persons with already known employment prohibitive backgrounds would be able to continue working until 10/1/2000 instead of 10/1/1999. Another full year's extension would significantly undermine the purpose of the law, namely to prohibit persons with certain backgrounds from coming into contact with vulnerable persons cared for by entities.	If the caregiver statutes change significantly in removing time lines and other elements of the process for conducting background checks, extend the effective date covering "current" employees; otherwise, stay with the current full implementation date of October 1, 1999.

II. CURRENT CHAPTER 50 PROVISIONS MISSING FROM WHA PROPOSAL (5/5/99)		
WHA PROPOSAL	CONCERN	DHFS RECOMMENDATION
13. Eliminates current statute's licensure and employment prohibition for a person credentialed by DRL where DRL has limited the person's necessary credential.	If a licensed professional is prohibited from working by their own licensing agency, DHFS should support that decision.	Continue current statutory prohibition of licensure or employment if a required DRL credential is limited.

**II. CURRENT CHAPTER 50 PROVISIONS MISSING FROM WHA PROPOSAL
(5/5/99)**

WHA PROPOSAL	CONCERN	DHFS RECOMMENDATION
<p>14. Eliminates all provisions relative to the Background Information Disclosure (BID) Form, the form itself, and the current statute's licensure and employment prohibition if the Department or an entity should have known of an unsatisfactory background.</p>	<p>The BID form is a valuable source of background information; to fail to ask an employee about his background is to ignore the most readily available source of background information, and is directly contrary to the goal of protecting vulnerable persons.</p> <p>Deleting the BID form entities to rely strictly on the admittedly incomplete information received from DOJ, without even asking the employee about their background.</p> <p>Requiring entities only to check data bases (IBIS checks), eliminates any requirement for a conviction an employee would admit to on a BID, and for any other conviction not sent to DOJ, or for convictions whose facts are not obvious on the DOJ report.</p>	<p>Continue current statutory provisions requiring the Department and entities to research an offense to the degree necessary to determine whether the offense is employment or licensure prohibitive, and the factual circumstances of any offense whose facts are not obvious from the face of the DOJ report.</p> <p>Continue all current statutory provisions related to the BID form.</p>
<p>15. Deletes the exemption from background checks for minors whose disclosure form does not indicate ineligibility for work.</p>	<p>Except for day care providers, juvenile delinquency adjudications are confidential, so the vast majority of checks on minors would be costly while yielding no information.</p>	<p>Continue current requirement that minor employees complete a BID form, and continue the current exemption for minors whose BID forms show eligibility to work.</p>
<p>16. Deletes the current statute's provision that entities that fail to do the background checks, (within the specified time frames, on the right people, etc.), or the 4 year re-checks may be subject to a possible \$1,000 fine or other sanctions determined by DHFS by rule.</p>	<p>These sanctions would normally only be applied in cases of egregious failure, and should be available as one piece of an enforcement package.</p>	<p>Continue current possible sanctions for failure to complete required checks.</p> <p>Continue current requirement to recheck backgrounds at least every 4 years.</p>
<p>17. Deletes Chapter 227 appeal when a person is denied rehabilitation approval.</p>	<p>The consequences of having a "serious offense" in one's background are very serious. Persons who must apply for rehab. approval in order to work or be licensed should also have a due process appeal available if the Department denies approval.</p>	<p>Continue current statutory Chapter 227 appeal for denied rehabilitation approval.</p>
<p>18. Deletes DHFS authority</p>	<p>DHFS has insufficient funds to</p>	<p>Continue current statutory</p>

**II. CURRENT CHAPTER 50 PROVISIONS MISSING FROM WHA PROPOSAL
(5/5/99)**

WHA PROPOSAL	CONCERN	DHFS RECOMMENDATION
to collect a fee for conducting background checks on persons seeking licensure.	absorb the costs of checking the backgrounds of the thousands of entities it regulates.	authority for DHFS to collect a fee for conducting licensure background checks.

III. CONCERNS RELATED TO PROPOSED CHAPTER 146 CHANGES (5/5/99)

WHA PROPOSAL	CONCERN	DHFS RECOMMENDATION
19. Defines an allegation of abuse as an accusation made by someone with " direct knowledge " of the alleged misconduct.	Requiring direct knowledge of an incident of misconduct is far too narrow to cover the ways abuse, neglect, or misappropriation can come to light. Some of these include coming upon an incident shortly after it occurs, learning about an incident from someone who has knowledge of the incident, observing an injury to a client, or discovering personal property of a client to be missing.	Continue following the provisions of BQA Numbered Memo 93-034, which describes incidents of misconduct that must be reported. DHFS will issue an updated version of that memo to all entities previously and newly required to report.
20. Returns to the former HSS 129 definitions of "abuse," "neglect," and "misappropriation," which covered only nurse aides.	The most often expressed concern is that the current HSS 13 abuse definition is too broad because it includes any action that is contrary to facility policies and procedures, contrary to a resident's care plan, done purposely, and that causes or could reasonably be expected to cause pain or injury.	Continue to define "abuse," "neglect," and "misappropriation" by rule. Change the HFS 13 definition of "abuse" in effect as of February 27, 1999 to separate definitions of "abuse" and "neglect." (See attached definitions.) "Abuse" would cover acts done purposely with intent to harm, harass, or intimidate a client. "Neglect" would focus on acts not done with intent to harm but done purposely and of significant enough recklessness or negligence to cause or reasonably be expected to cause harm.
21. Directs DHFS to report to the legislature regarding available research describing the nexus between past criminal convictions and future predicted risk to vulnerable persons.	The Department has insufficient resources to conduct what would certainly be an extensive research effort.	Statute should authorize and fund such a study by a third party, such as a college or university.

May 5, 1999

Suggested "abuse" and "neglect" definitions:

(1) **"Abuse"** means any of the following:

(a) An **act, or repeated acts** by a caregiver or nonclient resident, including but not limited to restraint, isolation or confinement, that, when contrary to the entity's policies and procedures or when not a part of the client's treatment plan, and **when done intentionally to cause harm**, does any of the following:

1. Causes or could reasonably be expected to cause pain or injury to a client or the death of a client.

2. Substantially disregards a client's rights under either ch. 50 or 51, Stats., or a caregiver's duties and obligations to a client.

3. Causes or could reasonably be expected to cause mental or emotional damage to a client, including harm to the client's psychological or intellectual functioning that is exhibited by anxiety, depression, withdrawal, regression, outward behavior, agitation, fear of harm or death, or a combination of these behaviors. This subdivision paragraph does not apply to permissible restraint, isolation, or confinement implemented by order of a court or other lawful authority.

(b) An act or acts of sexual intercourse or sexual contact under s. 940.225, Stats., by a caregiver and involving a client.

(c) The forcible administration of medication to or the performance of psychosurgery, electroconvulsive therapy or experimental research on a client with the knowledge that no lawful authority exists for the administration or performance.

(d) A course of conduct or repeated acts by a caregiver which serve no legitimate purpose and which, when done with intent to harass, intimidate, humiliate, threaten or frighten a client, causes or could reasonably be expected to cause the client to be harassed, intimidated, humiliated, threatened or frightened.

(e) An act that does not constitute self-defense as defined in s. 939.48, Stats.

(f) "Abuse" does not include an act or acts of mere inefficiency, unsatisfactory conduct or failure in good performance as the result of inability, incapacity, inadvertency, or ordinary negligence in isolated instances, or good faith errors in judgment or discretion.

(2) **"Neglect"** means an **intentional omission or course of conduct** by a caregiver or nonclient resident that is contrary to the entity's policies and procedures or is not a part of the client's treatment plan, and that **through substantial carelessness or negligence** does any of the following:

(a) Causes or could reasonably be expected to cause pain or injury to a client or the death of a client.

(b) Substantially disregards a client's rights under either ch. 50 or 51, Stats., or a caregiver's duties and obligations to a client.

(c) Causes or could reasonably be expected to cause mental or emotional damage to a client, including harm to the client's psychological or intellectual functioning that is exhibited by anxiety,

depression, withdrawal, regression, outward behavior, agitation, fear of harm or death, or a combination of these behaviors. This subdivision paragraph does not apply to permissible restraint, isolation, or confinement implemented by order of a court or other lawful authority.

(d) "Neglect" does not include an act or acts of mere inefficiency, unsatisfactory conduct or failure in good performance as the result of inability, incapacity, inadvertency, or ordinary negligence in isolated instances, or good faith errors in judgment or discretion.

**“Serious Crimes” List
Draft May 5, 1999**

ALL PROGRAMS		
Wis. Stats.	Crime	Id'd in Stat. (S) or by Dept (D); Req'd by Federal Law for Foster Care(FF)
940.01	1 st Degree Intentional Homicide	S, FF
940.225(1)	1 st Degree Sexual Assault	S, FF
940.285(2)(b)1 or 2	Abuse of Vulnerable Adults (felony)	D
940.295	Abuse/neglect of patients & residents (felony)	D
948.02(1)	1 st Degree Sexual Assault of a Child	S, FF
948.02(2)	2 nd Degree Sexual Assault of a Child (greater than 4 year age difference)	S, FF
948.025	Repeated Sexual Assault of a Child (under 13 or greater than 4 year age difference)	S, FF
948.03(2)(a)	Physical Abuse of a Child – Intentional – Cause Great Bodily Harm	D,FF
FOR FOSTER CARE and PERSON'S WITH CONTACT WITH CHILDREN		
346.63	Reckless Driving - cause great bodily harm (felony)	FF
940.02	1 st Degree Reckless Homicide	FF
940.03	Felony Murder	FF
940.05	2 nd Degree Intentional Homicide	FF
940.06	2 nd Degree Reckless Homicide	FF
940.08	Homicide by negligent handling of dangerous weapon, explosives or fire	FF
940.19(2)-(6)	Battery (felony) – where victim is spouse	FF
940.20	Battery – Special Circumstances – where victim is spouse	FF
940.21	Mayhem	FF
940.225(2)	2 nd Degree Sexual Assault	FF
940.225(3)	3 rd Degree Sexual Assault	FF
940.23	Reckless Injury	FF
940.305	Taking Hostages	FF
940.31	Kidnapping	FF
941.20(2) or (3)	Endangers Safety – Dangerous Weapon	FF
941.21	Disarming Peace Officer	FF
943.10(2)	Burglary while armed	FF
943,23(1g)(1m) or (1r)	OMWOC	FF
943.32(2)	Robbery w/ dangerous weapon	FF
948	Any felony	FF
948.05	Sexual Exploitation of a child	D, FF
948.055	Causing a child to view or listen to sexual activity	D, FF
948.06	Incest with a Child	D, FF
948.07	Child Enticement	D, FF
948.08	Soliciting a child for prostitution	D, FF
948.11(2)(a) or (am)	Exposing child to harmful materials or harmful descriptions or narrations	D, FF
948.12	Possession of child pornography	D, FF
948.13	Child Sex Offender working with Children	D, FF
948.30	Abduction of another's child; constructive custody	D, FF



State Representative

GREGG UNDERHEIM

Chair: Assembly Committee on Health

Chair: Assembly Committee on State & Federal Relations

P.O. Box 8953 • State Capitol
Madison, WI 53708-8953
(608) 266-2254

April 14, 1999

Rep.Underheim@legis.state.wi.us

Message Hotline:

1 (800) 362-9472

TDD: 1 (800) 228-2115

Joe Leean, Secretary
Department of Health and Family Services
1 W. Wilson St., Room 650
Madison, WI 53703

1652 Beech Street
Oshkosh, WI 54901
(414) 233-1082

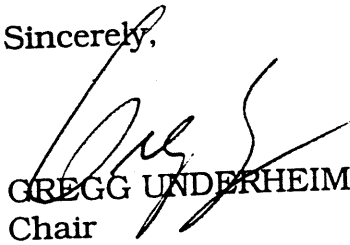
Dear Secretary Leean:

I am writing to inform you that the Assembly Committee on Health took executive action on April 13, 1999 on Clearinghouse Rules 98-188 and 98-191, which relate to caregiver background checks and investigations of abuse, neglect and misappropriation of property. The Committee approved a motion to request the Department to modify those rules. Among the modifications the Department should consider is a reevaluation of inclusion of persons convicted of murder, sexual assault or sexual exploitation in the bar with rehabilitation list and the Department should consider stricter limitations on those persons. This would be among the modifications that the Department should consider and it is my hope that you work with the Committee in developing modifications to the proposed rules.

Since the Committee's jurisdiction over the rules ends on April 21, 1999, the Committee needs an agreement from the Department by that date that the Department will modify the rules. The nature of the modifications and the actual language of the modifications can be specified at a later time.

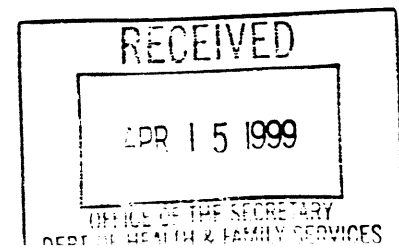
Thank you for your attention to this matter. I look forward to your response.

Sincerely,

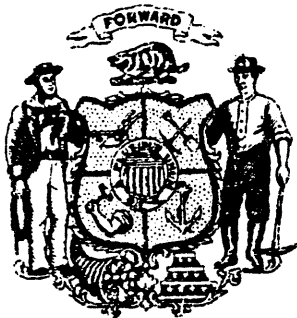

GREGG UNDERHEIM
Chair
Assembly Committee on Health

GU/sjl

cc: Members of the Assembly Committee on Health



WISCONSIN
STATE
ASSEMBLY



**SHELDON
WASSERMAN**
STATE REPRESENTATIVE

April 7, 1999

Representative Gregg Underheim, Chair
Assembly Committee on Health
Room 11-North, State Capitol
Interdepartmental mail

Dear Gregg:

Per your request, I have reviewed the criminal background check rules that were referred to the Health Committee. It is my opinion that, in addition to those already specified by rule, a permanent bar should also be instituted for all programs under HFS 12 for all classifications of these crimes:

Chapter 940 Crimes Against Life and Bodily Security

1. first degree reckless homicide
2. felony murder
3. second degree intentional homicide
4. sexual exploitation by therapist--sexual contact
5. second degree sexual assault
6. third degree sexual assault

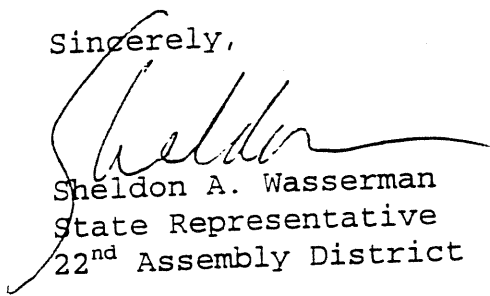
Chapter 948 Crimes Against Children

1. second degree sexual assault of a child
2. sexual intercourse with a child age 16 or older

I would be willing to entertain some exceptions for those facilities that agree to accept full liability for employing anyone who falls under the permanent bar category.

Thank you for seeking my input. Please contact me with any questions.

Sincerely,



Sheldon A. Wasserman
State Representative
22nd Assembly District

MADISON:
POST OFFICE BOX 8953
MADISON, WISCONSIN 53708
(608) 266-7671
TOLL-FREE NUMBER: 1-888-534-0022
FAX: (608) 266-7038
E-MAIL: rep.wasserman@legis.state.wi.us
WEB PAGE: [http://www.legis.state.wi.us/
assembly/asm22/news/](http://www.legis.state.wi.us/assembly/asm22/news/)

HOME:
3487 NORTH LAKE DRIVE
MILWAUKEE, WISCONSIN 53211
(414) 964-0663

♻️
PRINTED ON RECYCLED PAPER

SW/so

BACKGROUND INFORMATION DISCLOSURE INSTRUCTIONS

The Background Information Disclosure form (HFS64) gathers information as required by the Wisconsin Caregiver Background Check Law to help employers and governmental regulatory agencies make employment, contract, residency, and regulatory decisions. Complete and return the entire form and attach explanations as specified by employer or governmental regulatory agency.

CAREGIVER BACKGROUND CHECK LAW

In accordance with the provisions of sections 48.685 and 50.065 of the Wisconsin Statutes, for persons who have been convicted of or have charges pending or have committed certain acts, crimes or offenses:

1. The Department of Health and Family Services (DHFS) may not license, certify or register the person or entity (Note: Employers and Care Providers are referred to as "entities");
2. A county agency may not certify a day care or license a foster or treatment foster home;
3. A child placing agency may not license a foster or treatment foster home or contract with an adoptive parent applicant for a child adoption;
4. A school board may not contract with a licensed day care provider; and
5. An entity may not employ, contract with or permit persons to reside at the entity.

A list of barred acts, crimes and offenses is available from the regulatory agencies or through the Internet at www.dhfs.state.wi.us clicking on the Background Check quick link.

THE NEW LAW COVERS THE FOLLOWING EMPLOYERS / CARE PROVIDERS (REFERRED TO AS "ENTITIES")

Programs Regulated Under Chapter 48 of Wisconsin Statute	Treatment Foster Care, Family Day Care Centers, Group Day Care Centers, Child Caring Institutions, Child Placing Agencies, Day Camps for Children, Family Foster Homes for children, Group Homes for Children, Shelter Care Facilities for Children, and Certified Family Day Care.
Programs Regulated Under Chapters 50, 51, and 146 of Wisconsin Statute	Emergency Mental Health Service Programs, Mental Health Day Treatment Services for Children, Community Mental Health, Developmental Disabilities, AODA Services, Community Support Program, Community Based Residential Facilities, 3-4 Bed Adult Family Homes, Residential Care Apartment Complexes, Ambulance Service Providers, EMTs – Basic, Intermediate, and Paramedic, First Responders – Defibrillation, Hospitals, Rural Medical Centers, Hospices, Nursing Homes, Facilities for the Developmentally Disabled, and Home Health Agencies – including those that provide personal care services.
Others	Day Care Providers contracted through Local School Boards

THE NEW LAW COVERS THE FOLLOWING PERSONS

- Anyone employed by or contracting with a covered entity who has access to the clients served, except if the access is infrequent or sporadic and service is not directly related to care of the client.
- Anyone who is a Day Care Provider who contracts with a School Board under Wisconsin Statute 120.13 (14).
- Anyone who lives on the premises of a covered entity and is 12 years old or over, but is not a client.
- Anyone who is licensed by DHFS.
- Anyone who has a foster home licensed by DHFS.
- Anyone certified by DHFS.
- Anyone who is a Day Care Provider certified by a county department.
- Anyone registered by DHFS.
- Anyone who is a board member or corporate officer who has access to the clients served.

FAIR EMPLOYMENT ACT

Wisconsin's Fair Employment Law, ss. 111.31-111.395, Wisconsin Statutes, prohibits discrimination because of a criminal record or pending charge, unless the record or charge is substantially related to the circumstances of the particular job or licensed activity.

PERSONALLY IDENTIFIABLE INFORMATION: This information is used to obtain relevant data as required by the provisions set forth by the Wisconsin Caregiver Background Check Law. Providing your social security number is voluntary, however your social security number is one of the unique identifiers used to prevent incorrect matches. For example, the Department of Justice uses social security numbers, names, gender, race, and date of birth to prevent incorrect matches of persons with criminal convictions. The Department of Health and Family Services' Careworker Registry uses social security numbers as one identifier to prevent incorrect matches of persons with findings of resident abuse or neglect or misappropriation of a resident's property.

BACKGROUND INFORMATION DISCLOSURE

Completion of this form is required under the provisions of sections 48.685 and 50.065 of the Wisconsin Statutes. Failure to comply may result in a denial or revocation of your license, certification or registration; or denial or termination of your employment or contract.

Please print your answers.

Check the box that applies to you.

- | | |
|---|---|
| <input type="checkbox"/> Employee / Contractor (Including new applicant)
<input type="checkbox"/> Applicant for a license or certification or registration (including continuation or renewal) | <input type="checkbox"/> Household member/lives on premises - but not a client
<input type="checkbox"/> Other – specify: |
|---|---|

Name - First and Middle	Name - Last	Position Title (Complete only if you are a prospective employee or contractor, or a current employee or contractor.)		
Any other names by which you have been known (including maiden name)		Birthdate	Gender (M/F)	Race
Address			Social Security Number(s)	
Business Name and Address of Employer or Care Provider (Entity)				

Section A - ACTS, CRIMES AND OFFENSES THAT MAY ACT AS A BAR OR RESTRICTION	YES	NO
1. Do you have <u>criminal charges pending</u> against you or were you <u>ever convicted of any crime</u> anywhere, including in federal, state, local and tribal courts? ➤ If Yes , list each crime, when it occurred or the date of the conviction, and the city and state where the court is located. You may be asked to supply additional information including a certified copy of the judgement of conviction, a copy of the criminal complaint, or any other relevant court or police documents.		
2. Were you <u>ever found to be (adjudicated) delinquent</u> by a court of law on or after your 12 th birthday for a crime or offense? (NOTE: A response to this question is <u>only</u> required for group and family day care centers for children and day camps for children.) ➤ If Yes , list each crime, when and where it happened, and the location of the court (city and state). You may be asked to supply additional information including a certified copy of the delinquency petition, the delinquency adjudication, or any other relevant court or police documents.		
3. Has any government or regulatory agency (other than the police) ever found that you <u>committed child abuse or neglect</u> ? ➤ If Yes , explain, including when and where it happened.		
4. Has any government or regulatory agency (other than the police) ever found that you <u>abused or neglected any person or client</u> ? ➤ If Yes , explain, including when and where it happened.		
5. Has any government or regulatory agency (other than the police) ever found that you <u>misappropriated (improperly took or used) the property of a person or client</u> ? ➤ If Yes , explain, including when and where it happened.		
6. Has any government or regulatory agency (other than the police) ever found that you <u>abused an elderly person</u> ? ➤ If Yes , explain, including when and where it happened.		
7. Do you have a government issued credential that is not current or is limited so as to restrict you from providing care to clients? ➤ If Yes , explain, including credential name, limitations or restrictions, and time period.		

(Continued on next page)

Section B – OTHER REQUIRED INFORMATION	YES	NO
1. Has any government or regulatory agency ever limited, denied or revoked your license, certification or registration to provide care, treatment or educational services? ➤ If Yes, explain, including when and where it happened.		
2. Has any government or regulatory agency ever denied you permission or restricted your ability to live on the premises of a care providing facility? ➤ If Yes, explain, including when and where it happened and the reason.		
3. In the past 3 years, have you been discharged from a branch of the US armed forces, including any reserve component? ➤ If Yes, attach a copy of your discharge papers (DD214).		
4. Have you resided outside of Wisconsin in the last 3 years? ➤ If Yes, list each state and the dates you lived there.		
5. Have you had a caregiver background check done within the last 4 years? ➤ If Yes, list the date of each check, and the name, address and phone number of the person, facility or government agency that conducted each check.		
6. Have you ever requested a rehabilitation review with the Wisconsin Department of Health and Family Services, a county department, a private child placing agency, school board, or DHFS designated tribe? ➤ If Yes, list the review date and the review result. You may be asked to provide a copy of the review decision.		

A "NO" answer to all questions does not guarantee employment, residency, a contract or regulatory approval.

I understand, under penalty of law, that the information provided above is truthful and accurate to the best of my knowledge and that knowingly and intentionally providing false information or omitting information may result in a forfeiture of up to \$1000.00 and other sanctions as provided in HFS 12.20 (1) (c), Wis. Adm. Code.

YOUR SIGNATURE

Date Signed

FAX

Cover Sheet

Date: 5-25-99
To: Cory Mason
From: Tim Hartin
Subject: Background Check Draft
Number of pages (includes this cover sheet): 10
Check if urgent Reply deadline:

Message:



Wisconsin Health &
Hospital Association

5721 Odana Road
Madison, WI
53719-1289

608/274-1820

FAX: 608/274-8554

<http://www.wha.org>

The information in this FAX is intended for the use of the individual or organization to which it is addressed. If you have received this communication in error, please notify Wisconsin Health & Hospital Association by telephone and return the original message to us by mail. Our address and telephone number are to the left. Thank you.

Chair

George L. Johnson
Reedsburg

Chair-Elect

William D. Petasnik
Milwaukee

Immediate Past Chair

Mark V. Knight
Milwaukee

President/CEO

Robert C. Taylor

May 24, 1999

TO: Interested Parties

FROM: Tim Hartin, General Counsel 

SUBJECT: Background Check Draft

Attached is the latest draft of the background check proposal, redlined against the May 7 draft, reflecting changes from the May 20 meeting between Scott Peterson and Tim Hartin of WHA and Sue Dow and John Kiesow of DHFS, as well as changes from various conversations with coalition members. Significant changes and outstanding issues include the following:¹

1. The caregiver definition is still under discussion, with the two contending models being a contact- or access-based definition and a client care-based definition. Note that the current draft makes clear that, where a corporate entity is licensed by DHFS, the background check requirement does not include the officers, directors, members, or shareholders of the corporate person.
2. The contractor definition has been further refined to include implied contracts, subcontractors, and agents of contractors. Students are still excluded, although DHFS wants them included.
3. Personal care workers and supportive home care agencies have been added back to the definition of entity. Their deletion in the last draft was due to a misunderstanding on my part.
4. The 9 additional Chapter 148 offenses identified by DHFS have been added to the crimes list for discussion purposes.
5. The background check cycle has been changed from 5 years to 4 years to better synchronize with the 2 year licensing cycle.
6. The provisional employment period pending receipt of the background check has been refined to allow employment of employees and caregivers with clean BIDs, provided that they provide client care only under supervision. The 60 day cap was put back on this period to give a deadline to employers for ordering and reviewing the background

¹ There are a number of purely technical changes as well that are not highlighted or discussed in this memo, but are redlined.



Wisconsin Health &
Hospital Association, Inc.

5721 Odana Road
Madison, WI
53719-1289

608/274-1020

FAX: 608/274-8554

<http://www.wha.org>

check. With this 60 day cap, the earlier language requiring that the background check be ordered as soon as reasonably possible was deleted.

7. The record-keeping requirement has been amended to require that entities can either retain the information or leave it with a third party, provided that they have access to it upon two days notice. The access standard provides maximum flexibility to allow schools, temp agencies, corporate parents or affiliates, and/or third-party vendors to accumulate and maintain the information, so long as it is available to the employer "entity" for the necessary employment decision-making. Whether an entity has the required agreement and access should be easy to audit for regulatory compliance purposes.
8. Coalition members have asked that the requirement that a rehab review application be sponsored by an employer be dropped, while DHFS has floated the idea of expanding this requirement to allow community organizations (or members?) to sponsor the request.
9. The requirement that a person have a clean record for the past 5 years in order to continue working while their rehab request is being processed has been dropped. The grandfather clause for current employees undergoing rehabilitation review is intended to mirror the current arrangement.
10. A new paragraph was added to make clear that the employment bar applies to all persons as soon as the conviction shows up in the background check materials provided to the employer. This was added to clear up a potential technical problem that might have inadvertently excluded post October 1998 convictions for some people.
11. This new paragraph makes clear that the applicable standard is a "document review" standard, not a "should have known" standard as preferred by DHFS.
12. Coalition members requested that references to the NCIC be dropped.
13. The effective dates are open for discussion.
14. The allegation definition has had references to credibility dropped.
15. The abuse and neglect definitions are open for discussion.

**Proposed Background Check and
Abuse Reporting Reform**

May 7~~24~~, 1999

Repeal current background check statute (at 50.065) and replace with:

Section 50.065

(1) In this section:

(a) "Client" means a person who receives direct care or treatment services from an entity.

(b) "Caregiver" means:

1. A person who is or is expected to be an employe or contractor of an entity and who is expected to provide direct client care as a regular part of their duties for such entity, and who is not licensed, certified or registered by the Department of Health and Family Services under (1)(b)2.; or
2. A person who has or is actively seeking a license, certification or registration to operate an entity from the Department of Health and Family Services. This shall not apply to officers, directors, members or shareholders of a corporate person.
3. Clerical, administrative, maintenance, dietary, and other support workers whose duties for an entity do not include direct and regular client care are not caregivers.

(c) "Contractor" or prospective contractor, means, with respect to an entity, a person who ~~has provides services to such entity under a n-express-contract or sub-contract with the entity, or an agent of such person.~~ A caregiver person with admitting privileges at an entity shall be deemed a contractor of that entity for purposes of this definition. Students fulfilling educational requirements are not contractors for purposes of this definition.

(d) "Entity" means a facility, organization or service that is licensed or certified by or registered with the Department of Health and Family Services to provide direct care or treatment services to clients. "Entity" includes a hospital, a personal care worker agency, a supportive home care service agency, or any other agency which contracts with a county to provide services under ss. 46.27(7), 46.27(11), 46.275, 46.277, or 46.278. "Entity" does not include any of the following:

1. Licensed or certified child care under ch. 48.
2. Kinship care under s. 48.57 (3m) or long-term kinship care s. 48.57(3n).

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3. A person certified as a medical assistance provider, as defined in s. 49.43 (10), who is not otherwise approved by the Department of Health and Family Services as a hospital under s. 50.35 or licensed or certified by or registered with the Department of Health and Family Services.
 4. An entity, as defined in s. 48.685(1) (b).
 5. A public health dispensary established under s. 252.10
 6. A person certified as an emergency medical technician under s. 146.50.
- (e) "Serious offense" means the following crimes or offenses, or the equivalent crime in another state:
1. First-degree intentional homicide under s. 940.01.
 2. First degree sexual assault under s. 940.225 (1).
 3. Felony abuse of vulnerable adults under s. 940.285(2)(b)1. or 2.
 4. Felony abuse or neglect of patients or residents under s. 940.295.
 5. First degree sexual assault of a child under s. 948.02 (1).
 6. Second degree sexual assault of a child under s. 948.02 (2) if the person was, at the time of the sexual contact or sexual intercourse, more than 4 years older than the child with whom the person had the sexual contact or sexual intercourse.
 7. Repeated acts of sexual assault of the same child under s. 948.025 if the child had not attained the age of 13, or if the child had attained the age of 13 and had not attained the age of 16 and the person was, at the time of the sexual contact or sexual intercourse, more than 4 years older than the child with whom the person had the sexual contact or sexual intercourse.
 8. Intentional physical abuse of a child resulting in great bodily harm under s. 948.03(2)(a).
 9. Sexual exploitation of a child under s. 948.05.
 10. Causing a child to view or listen to sexual activity under s. 948.055.
 11. Incest with a child under s. 948.06.
 12. Child enticement unders. 948.07.

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13. Soliciting a child for prostitution under s. 948.08.

14. Exposing a child to harm materials or harmful descriptions or narrations under s. 938.11(2)(a) or (am).

15. Possession of child pornography under s. 948.12.

16. Child sex offender working with children under s. 948.13.

17. Abduction of another's child under s. 948.30.

9-18. A substantiated report of neglect, or abuse of a client, or misappropriation of a client's property based on information maintained by the Department of Health and Family Services.

- (2) (a) 1. An entity shall request and review the information specified under para. (2)(c) for all prospective contractors who are caregivers specified under para. 1(b)(1), for all prospective employees, and for all prospective non-client residents of the entity. ~~This information shall be requested as soon as reasonably possible for prospective contractors who are caregivers, prospective employees, and prospective non-client residents.~~ Effective [effective date for existing employees], an entity shall have requested and reviewed the information specified under para. (2)(c) for all contractors who are caregivers specified under para. 1(b)(1), for all employees, and for all non-client residents of the entity. This Current background check information shall be obtained reviewed at least once every four five years for existing employees, contractors who are caregivers, and non-client residents of the entity.
2. With respect to any ~~minor~~ minor under the age of eighteen whose background information disclosure form does not disclose a serious offense, an entity shall not be required to request any further background information.
3. A No-prospective employee or prospective caregiver whose background information disclosure form does not reveal any serious offenses may perform client care responsibilities under supervision for up to 60 days until the entity has received and reviewed this information pending the review and receipt of the information specified in para. 2(c).
4. An entity or contractor may provide any information that it has obtained under this paragraph ~~this information~~ to another entity that is a prospective or existing employer or contractor upon request, but if this information is more than one year old the receiving entity shall obtain current information.

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(b) The Department of Health and Family Services shall obtain the information specified under para. (2)(c) with respect to a person specified under para. 1(b)(2) at least once every ~~five~~ four years. The Department of Health and Family Services shall provide this information to an entity that is a prospective or existing employer or contractor upon request, but if this information is more than one year old the receiving entity shall obtain current information.

(c) The Department of Health and Family Services or an entity is required to obtain and ~~keep on review~~ file the following information when conducting a background check required by para. (2)(a) or (2)(b):

1. A background information disclosure form, as provided by the Department of Health and Family Services by rule. ~~This form shall require the person completing the form to include his or her date of birth and social security number.~~
 2. A criminal history search from the records maintained by the Department of Justice.
 3. Information that is contained in the registry under s. 146.40 (4g) regarding any findings against the person.
 4. Information maintained by the Department of Regulation and Licensing regarding the status of the person's credentials, if applicable.
 5. Information maintained by the Department of Health and Family Services regarding any substantiated reports of child abuse or neglect against the person.
 6. Information maintained by the Department of Health and Family Services under this section regarding any denial to the person of a license, certification, certificate of approval or registration or of a continuation of a license, certification, certificate of approval or registration to operate under section (3)(a)1. and regarding any denial to the person of employment at, a contract with or permission to reside at an entity under section (3)(a)2.
- (3) For caregivers or non-client residents convicted of or found to have committed a serious offense or, in the case of a position for which the person must be credentialed by the Department of Regulation and Licensing, the caregiver's credential is not current or is limited so as to restrict the person from providing adequate care to a client:-
1. Notwithstanding s. 111.335, the Department of Health and Family Services shall refuse to license, certify or register, or continue to license, certify or register any such caregiver to operate an entity.

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2. Notwithstanding s. 111.335, an entity shall refuse to employ or contract with or continue to employ or contract with any such caregiver, and shall refuse to allow the non-client resident to reside at the entity.
- (b) 1. Sections (3)(a) 1. and 2. may be waived by the Department of Health and Family Services for any person who demonstrates to the Department of Health and Family Services that he or she has been rehabilitated by clear and convincing evidence and in accordance with the procedures established by the Department of Health and Family Services by rule.
2. An application for a rehabilitation waiver under para. (3)(b)(1) must include a written statement of support by an entity that is the person's prospective or existing employer or contractor, or by one or more community organizations or members of the community where the person will be employed, under contract, or a non-client resident.
 3. An entity may continue to employ or contract with a person who has requested a rehabilitation waiver while the rehabilitation review is pending, provided that such person ~~has not been imprisoned or convicted of a felony within the past five years~~, has been continuously employed by or under contract with the entity since October 1, 1998, and has submitted a rehabilitation waiver request by [effective date for current employees].
 4. Any person who is permitted but fails under para. (3)(b)1. to demonstrate to the Department of Health and Family Services that he or she has been rehabilitated may appeal to the secretary of health and family services or his or her designee. Any person who is adversely affected by a decision of the secretary or his or her designee under this subsection has a right to a contested case hearing under ch. 227.
- (c) The provisions of this section (3) shall apply to any employee, contractor who is a caregiver, or non-client resident who is convicted of or found to have committed a serious offense or, in the case of a position for which the person must be credentialed by the Department of Regulation and Licensing, the caregiver's credential is not current or is limited so as to restrict the person from providing adequate care to a client, provided that such conviction, finding or credential expiration or limitation is reflected in the background check information received and reviewed by an entity or the department.
- (4) If the person who is the subject of the criminal history search under para. (2)(a) or (b) is not a resident of this state, or if at any time within the 3 years preceding the date of the search that person has not been a resident of this state, the department or entity shall make a good faith effort to obtain from any state in which the person is a resident or was a resident within the 3 years preceding the date of the search information that is equivalent of the information obtained in a criminal history search from the records maintained by the Department of

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Justice. ~~A request for information from the National Crime Information Center shall be deemed a good faith effort to obtain such information from other states.~~

(5) An entity shall either retain the most current background check information that it has obtained pursuant to para. 2(a) or, when such information is retained by another person, shall have access to it within two business days of submitting a request pursuant to a written agreement with the person retaining the records.

~~(5)(6)~~ These requirements shall apply to:

- (a) ~~all persons specified under para. 1(b)(2) license applications or renewals submitted to DHS on or after _____.~~
- (b) ~~all prospective contractors who are caregivers and all prospective employees on or after _____.~~
- (a) all existing contractors who are caregivers and all existing employees on or after {October 1, 2000} _____.

~~(6)(7)~~ The Department of Health and Family Services may charge a fee for obtaining the information required under sub. (2)(b). The fee may not exceed the reasonable cost of obtaining the information. No fee may be charged to a nurse's assistant, as defined in s. 146.40 (1) (d), for obtaining or maintaining the information if to do so would be inconsistent with federal law.

- (a) An entity that violates para. (2)(a)1. or (3)(a)2. may be required to forfeit not more than \$1,000 and may be subject to other sanctions specified by the Department of Health and Family Services by rule.
- (b) A person who provides false information on a background information disclosure form required under para (2)(a)2. may be required to forfeit not more than \$1,000 and may be subject to other sanctions specified by the Department of Health and Family Services by rule.

Amend the current abuse reporting statute (§ 146.40(4r)(am)1.) as follows.

- (a) Except as provided in subd. 2, an entity shall report to the department any allegation of misappropriation of property or of neglect or abuse of a client by an employee or contractor of the entity.
- (b) For purposes of this paragraph, "allegation" means an accusation made orally or in writing for the purpose of starting an investigation, that an employee, ~~or contractor or~~