



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

RESEARCH APPENDIX - **PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Transfer Requested: 01/02/2014 (Per: GMM)

☞ Compile Draft – Appendix A

A ☞ The 2013 drafting file for
LRB-3930

C ☞ The 2013 drafting file for
LRB-3939

B ☞ The 2013 drafting file for
LRB-3938

D ☞ The 2013 drafting file for
LRB-3948

This file has been copied/added to the drafting file for

2013 LRB-4038

2013 DRAFTING REQUEST

Bill

Received: **1/8/2014** Received By: **eshea**
Wanted: **As time permits** Same as LRB:
For: **Children and Families 261-8678** By/Representing: **Kimberly Liedl**
May Contact: Drafter: **eshea**
Subject: **Children - day care** Addl. Drafters:
Extra Copies:

Submit via email: **YES**
Requester's email: **kimberly.liedl@wisconsin.gov**
Carbon copy (CC) to: **elisabeth.shea@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Changes to DCF 202

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	eshea 1/16/2014	kfollett 1/17/2014	jfrantze 1/17/2014	_____	mbarman 1/17/2014		

FE Sent For:

<END>

2013 DRAFTING REQUEST

Bill

Received: 1/8/2014 Received By: eshea
Wanted: As time permits Same as LRB:
For: Children and Families 261-8678 By/Representing: Kimberly Liedl
May Contact: Drafter: eshea
Subject: Children - day care Addl. Drafters:
Extra Copies:

Submit via email: YES
Requester's email: kimberly.liedl@wisconsin.gov
Carbon copy (CC) to: elisabeth.shea@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Changes to DCF 202 ✓

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	eshea	1/17 /PIKF	1/17 /PIKF	RS 1/17 /PIKF			

FE Sent For:

<END>

Shea, Elisabeth

From: Malaise, Gordon
Sent: Tuesday, January 07, 2014 5:40 PM
To: Kahler, Pam; Knepp, Fern; Shea, Elisabeth
Subject: FW: Administrative rule bill
Attachments: DCF Right the Rules Changes for Drafting.doc

Pam, Fern, and Lis:

Attached are some Right the Rules requests from DCF. Chapters 110 and 121 look like Public Assistance drafts and ch. 54 looks like a Child-Placing Agency draft. Chapter 202, relating to child care certification, could go either way as certification provisions are found in both chs. 48 and 49.

Good experience for someone who hasn't done many right the rules drafts yet. ☺

Gordon

From: Liedl, Kimberly - DCF [<mailto:Kimberly.Liedl@wisconsin.gov>]
Sent: Friday, January 03, 2014 5:16 PM
To: Malaise, Gordon
Cc: Buschman, Sara - DCF
Subject: Administrative rule bill

Hi, Gordon, here is the beginning of our drafting instructions for our admin rule change bill. Please let me know if you have any questions. We will send the rest of the changes early next week.

Thanks and have a good weekend,
Kimber

Kimberly Liedl
Legislative Liaison
Department of Children and Families

201 East Washington Avenue
Madison, WI 53703
T: 608.261.8678
E: kimberly.liedl@wisconsin.gov

Shea, Elisabeth

From: Malaise, Gordon
Sent: Tuesday, January 07, 2014 5:44 PM
To: Kahler, Pam; Knepp, Fern; Shea, Elisabeth
Subject: FW: Administrative rule bill
Attachments: DECE Licensing Rules for Drafting.doc

Pam, Fern, and Lis:

And here's the other shoe to drop. Again, ch. 202 can be viewed as either a Child Care or a Public Assistance (Wisconsin Shares) draft. Indeed, the ch. 202 change in the previous e-mail should probably be combined with these instructions. Chapters 250 and 251 are Child Care drafts.

We need to figure out who wants to do what.

Gordon

From: Liedl, Kimberly - DCF [<mailto:Kimberly.Liedl@wisconsin.gov>]
Sent: Tuesday, January 07, 2014 1:59 PM
To: Malaise, Gordon
Cc: Buschman, Sara - DCF
Subject: RE: Administrative rule bill

Hi, Gordon, here's our second set of changes for the Right the Rules bill. Please let me know if you have any questions.
Thanks,
Kimber

From: Liedl, Kimberly - DCF
Sent: Friday, January 03, 2014 5:16 PM
To: Malaise, Gordon - LEGIS
Cc: Buschman, Sara - DCF
Subject: Administrative rule bill

Hi, Gordon, here is the beginning of our drafting instructions for our admin rule change bill. Please let me know if you have any questions. We will send the rest of the changes early next week.
Thanks and have a good weekend,
Kimber

Kimberly Liedl
Legislative Liaison
Department of Children and Families

201 East Washington Avenue
Madison, WI 53703
T. 608.261.8678
E. kimberly.liedl@wisconsin.gov

Chapter: DCF 202 Child Care Certification

Section	Description	Possible Action	Type of Businesses Impacted
202.01 (2)	Authority, Purpose and Applicability Amend to refer to certification agency rather than just county and tribal agencies since some counties contract out for certification.	"This chapter applies to <u>county and tribal certification agencies</u> and to all providers of child care who receive reimbursement with state or federal child care funds and who are not required to be licensed under s. 48.65, Stats., including providers of child care for 1 to 3 children, providers of child care for a child in the child's home, and providers of child care for school-age children".	All certified providers
202.02 (1)	Definitions Amend definitions to refer to certification agency rather than just county and tribal agencies since some counties contract out for certification.	"(1) Agency" has the same meaning as "county or tribal certification agency."	All certified providers
202.02 (1r)	Definitions Create a new definition for "certification agency" to reflect repeal of 202.02 (4) definition of "county or tribal agency".	" (1r) Certification agency" means the department in a county having a population of 500,000 or more or any agency that has a contract with the department to certify child care operators under s. 48.651, Stats., and this chapter in a particular county or tribal area."	All certified providers
202.02 (3h)	Definitions Amend definition of child care certification worker to	"Child care certification worker" means a person employed by a county, a governing body of a federally-recognized American Indian, or an agency under contract	All certified

Section	Description	Possible Action	Type of Businesses Impacted
	simplify and clarify who is considered a certification worker.	with a county or tribe whose duties include determination of eligibility for child care certification."	providers
202.06 (1)	Certification Denial Amend to reflect actions available to the certification worker.	"The county or tribal certification agency may deny, suspend, revoke or refuse to renew certification if any of the following apply:"	All certified providers
202.06 (1) (c)	Certification Denial Amend to change "county or tribal agency" to "certification agency" consistent with definition changes above.	"(c) The county or tribal certification agency determines there is danger to the health, safety, or welfare of the children in care."	All certified providers
202.06 (1)(j)	Certification Denial Amend to change "county or tribal agency" to "certification agency" consistent with definition changes above.	"(j) The evaluation under s. DCF 202.04 (7) (b) 3. e. gives the county or tribal certification agency reasonable concern that the person's physical or mental health may endanger children in care."	All certified providers
202.06 (2)	Certification Denial Amend to change "county or tribal agency" to "certification agency" consistent with definition changes above.	"(2) The county or tribal certification agency shall require a child care operator to submit a new application for certification if the operator's previous certification was denied, revoked, or not renewed for a reason in s. DCF 202.05 or 202.06 (1). The county or tribal agency may refuse to accept a new application for 2 years after the date of the denial, revocation, or refusal to renew the certification."	All certified providers
202.06 (4)	Certification Denial	"(4) If a county or tribal certification agency denies,	

Section	Description	Possible Action	Type of Businesses Impacted
202.07	<p>Amend to change "county or tribal agency" to "certification agency" consistent with definition changes above and to add provision that explains that MECA appeals occur under Chapter. 227., Wis. Stats.</p>	<p>suspends, revokes, or refuses to renew a certification, the county or tribal agency shall notify the child care operator in writing and give reasons for the action. The action is reviewable pursuant to ch. 68, Stats., which provides for administrative review of the decisions of local agencies. Tribal agencies shall use an appeal process equivalent to the process in ch. 68, Stats. In a county with a population of 500,000 or more, an action by the certification agency may be appealed under ch. 227, Stats."</p>	All certified providers
202.08 (1) (a)	<p>Complaints</p> <p>Amend to change "county or tribal agency" to "certification agency" consistent with definition changes above.</p>	<p>"Within 10 working days after a county or tribal certification agency receives a complaint about a certified child care operator, the county or tribal agency shall investigate that complaint."</p>	All certified providers
3.	<p>Standards for Family Child Care and In-Home Child Care- Qualifications of Providers</p> <p>Amend to lessen regulation by removing the tuberculosis test requirement upon recertification and to clarify who is subject to a tuberculosis test based on the Center for Disease Control (CDC) guidelines.</p>	<p>"Each family and in-home child care operator provider shall demonstrate that he or she is free from tuberculosis prior to initial certification and recertification or the date the provider began working with children if that date is later than the date of initial certification. The agency may accept results of a test administered up to 12 months before the application date or the date the provider began working with children."</p> <p><i>↑ tuberculosis tests?</i></p>	Certified family providers
202.08 (1) (b)	<p>Standards for Family Child Care and In-Home Child Care- Qualifications of Providers</p> <p>Amend to change "county or tribal agency" to "certification agency" consistent with definition changes</p>	<p>"b. A county or tribal certification agency may require up to 5 hours of annual continuing education by a Level I (regular) certified provider operator each year following Level I (regular) certification."</p>	Certified

Section	Description	Possible Action	Type of Businesses Impacted
	and to clarify who is expected to obtain continuing education.		family providers
202.08 (1) (b) 2. c.	Standards for Family Child Care and In-Home Child Care- Qualifications of Providers Amend to change "county or tribal agency" to "certification agency" consistent with definition changes and to correct grammar.	"c. Prior to issuing a Level I (regular) certification, the county or tribal certification agency may require that an applicant has graduated from high school, obtained a high school equivalency diploma under s. 115.29 (4), Stats., or obtained a certificate of general education development under s. PI 5.04."	Certified family providers
202.08 (1) (c) (intro.)	Standards for Family Child Care and In-Home Child Care- Reporting Changes Amend to change "county or tribal agency" to "certification agency" consistent with definition changes.	"Reporting changes. A certified family child care operator shall report to the certification agency as soon as possible, but no later than the county or tribal certification agency's next working day, to the agency any changes that affect the certified family child care operator's eligibility for certification under this chapter, including the following:"	Certified family providers
202.08 (1) (d)	Standards for Family Child Care and In-Home Child Care- Substitutes, employees and volunteers Amend to change "county or tribal agency" to "certification agency" consistent with the definition changes above.	"(d) A substitute, employee, or volunteer for a Level I or II child care operator shall be approved by the county or tribal certification agency before employment or volunteer work commences. The county or tribal certification agency shall approve the substitute, employee, or volunteer if the agency has verification that the substitute, employee, or volunteer has met the standards under s. DCF 202.05, regarding the criminal history and child abuse record search, and completed the training on sudden infant death syndrome and shaken	Certified family providers

Section	Description	Possible Action	Type of Businesses Impacted
		baby syndrome and impacted babies required under par. (b) 1."	
202.08 (1) (e) 3.	Standards for Family Child Care and In-Home Child Care- Administration Amend to change "county or tribal agency" to "certification agency" consistent with the definition changes above.	"3. Ensure that all information provided to the county or tribal certification agency is current and accurate."	Certified family providers
202.08 (2) (a) 2m.	Standards for Family Child Care and In-Home Child Care- Home Requirements Repeal rule to remove outdated material that required compliance by June 1, 2010.	" 2m. Notwithstanding subd. 2, child care operators who hold a certification under s. 48.651, State, on June 1, 2008, are not required to comply with subd. 5 until June 1, 2010. "	Certified family providers
202.08 (2) (g)	Standards for Family Child Care and In-Home Child Care- Home Requirements Amend to include a requirement that the phone number for child protective services be posted near the phone.	"(g) The home shall have at least one telephone in working order with a list of emergency numbers posted by each telephone including numbers for the rescue squad, police, fire station, emergency medical care, <u>child protective services agency</u> , and poison control center. The certifying agency may prohibit the use of a cellular phone as a primary phone. If a cellular phone is used as a primary phone, it shall be operational during the hours of child care."	Certified family providers
202.08 (2) (o)	Standards for Family Child Care and In-Home Child Care- Home Requirements Clarify that the operator (rather than the provider as in	"(o) If the child care is provided in a rental property, the provider operator shall obtain permission from his or her landlord to operate a child care business."	

Section	Description	Possible Action	Type of Businesses Impacted
	current rule) must have the landlord's permission to operate a certified family child care program in a rental property.		Certified family providers
202.08 (4) (c)	<p>Standards for Family Child Care and In-Home - Child Health Care</p> <p>Amend to change "county or tribal agency" to "certification agency" consistent with definition changes above.</p>	<p>"(c) The requirement under par. (a) does not apply to a child care operator who requests from the county or tribal certification agency in writing an exemption for a child based upon adherence by the child's parent to religious belief in exclusive use of prayer or spiritual means for healing."</p>	Certified family providers

Chapter: DCF 250 Licensing Rules for Family Child Care Centers

Section	Description	Possible Action	Type of Businesses Impacted
250.04 (2) (g)	Operational Requirements – Terms of License Amend rule to address only business insurance. Drop the requirement that the provider must provide written information to parents on vehicle insurance.	“(g) Provide written information to parents on whether a licensee has insurance coverage on the premises; <u>and</u> on the child care operation and on vehicles if transportation is provided <u>business</u> . Liability insurance on the child care business is required if cats or dogs are allowed in areas accessible to children during the hours of operation as specified in s. DCF 250.07 (7) (h).”	Licensed family
250.04 (6) (a) 1.	Operational Requirements – Children’s Reports Amend to correct reference to a form when there are several forms used to meet this requirement.	“1. Enrollment information and health history on a form forms provided by the department. The enrollment information and health history shall be on file prior to the child’s first day of attendance.”	Licensed family

Chapter: DCF 251 Licensing Rules for Group Child Care Centers

Section	Description	Possible Action	Type of Businesses Impacted
251.03 (5)	Definitions Amend definition of "child care teacher" to include correct rule reference.	"(5) "Child care teacher" means a child care worker who plans, implements, and supervises the daily activities for a designated group of children and meets the qualifications under s. DCF 251.05(1)(d) <u>251.05 (1)(f)</u> ."	Licensed group
251.07 (6) (2) (i) 5.	Program - Health Amend to correct rule reference.	"5. Applicable rules under s. DCF 251.09(4) s. DCF 251.09 (4) (a) shall apply to child care workers when children 2 years of age and older require attention for diapering and toileting."	Licensed group
251.07 (6) (k) 3.	Program - Health Amend to allow alternate ways to document a child's health examination.	"3. The health examination report shall be an electronic printout from a licensed physician, physician assistant, or HealthCheck provider or on a form provided by the department and shall be that is signed and dated by a physician, physician assistant, or HealthCheck provider. "	Licensed group
251.09 (1) (e)	Additional Requirements for Infants and Toddler Care – General Requirements Amend to correct rule reference	"(e) The regularly assigned child care teacher and assistant child care teacher for each group of infants and toddlers shall have a minimum of 10 hours of training in infant and toddler care approved by the department within 6 months after assuming the position. If the training is not part of the required entry-level training under s. DCF 251.05 (3)(d) or (e) (1)(f) or (g), it shall be obtained through continuing education."	Licensed group
251.095 (2) (d)	Exceptions/Additional Requirements for Care of School-	"Section DCF 251.05(1)(e) 2 <u>251.05 (1)(b)</u> , relating to	

Section	Description	Possible Action	Type of Businesses Impacted
	<p>Age Children</p> <p>Amend to correct rule reference.</p>	<p>training for assistant child care teachers."</p>	<p>Licensed Group</p>

Next week

Kimber

DCF Right the Rules Changes

1. **Eliminate DCF Chapter 110, transitional jobs for low-income adults**

2. **Eliminate DCF Chapter 121, public assistance record retention**

3. **Update DCF 202 to reflect Milwaukee County child provider services unit**

DCF 202 has not been updated to reflect the establishment of the department administered child provider services unit in Milwaukee County. Several changes are necessary to resolve the mismatch between the statute and the rule. These changes will clarify authority for the department and providers.

1. **Amending the definition in DCF202.02 to include the state administered unit in Milwaukee County will conform the rule to the statutes:**

DCF 202.02 Definitions. In this chapter:

(1) "Agency" has the same meaning as "county or tribal agency."

✓ (4) "County or tribal agency" means a county department of social services established under s. 46.215 or 46.22, Stats., a county department of human services established under s. 46.23, Stats., the child care provider services unit established under s. 49.826, or a tribal agency.

49.826 Administration of child care provider services in certain counties.

(1) DEFINITIONS. In this section:

(a) "County" means a county having a population of 500,000 or more.

(b) "Department" means the department of children and families.

(c) "Secretary" means the secretary of children and families.

(d) "Unit" means the child care provider services unit.

2. **Amend the appeals language to clarify that any appeal of an action by the child care provider services unit is governed by Wis. Stat. Chapter 227, as it is an action of a state agency. County decisions are appealable under Chapter 68.**

DCF 202.06 Certification denial.

✓ (4) If a county or tribal agency denies, suspends, revokes or refuses to renew a certification, the county or tribal agency shall notify the child care operator in writing and give reasons for the action. The action is reviewable pursuant to ch. 68, Stats., which provides for administrative review of the decisions of local agencies. Tribal

2
combine
with request
ITs

agencies shall use an appeal process equivalent to the process in ch. 68, Stats. Decisions by the child care provider services unit in Milwaukee County are reviewable pursuant to ch. 227, Stats.

3
GMM
4. **Modify DCF 54 to reflect LAB audit recommendation: application submission deadline**

LAB audited the department's oversight of Child Placing Agencies (LAB REPORT 13-15, October 2013). One recommendation in the report is that DCF "revise DCF 54.02(3)(d), Wis. Adm. Code, to be consistent with s. 48.66(5), Wis. Stats., by requiring child-placing agencies to submit their applications at least 30 days prior to the continuation date;"

DCF 54.02 Organization and administration.

(d) Subsequent applications shall be submitted to the department:

1. At least ~~3 weeks~~ 30 days prior to the ~~expiration~~ continuation date of the current licensing.
2. When an additional office is to be opened.
3. When a new program subject to licensing is to be initiated.
4. When the geographic area served is to be extended.
5. When the address of the agency is to be changed.
6. When the name of the agency is to be changed.

48.66 Licensing duties of the department.

(5) A child welfare agency, group home, child care center, or shelter care facility license, other than a probationary license, is valid until revoked or suspended, but shall be reviewed every 2 years after the date of issuance as provided in this subsection. **At least 30 days prior to the continuation date** of the license, the licensee shall submit to the department an application for continuance of the license in the form and containing the information that the department requires. If the minimum requirements for a license established under s. 48.67 are met, the application is approved, the applicable fees referred to in ss. 48.68 (1) and 48.685 (8) are paid, and any forfeiture under s. 48.715 (3) (a) or penalty under s. 48.76 that is due is paid, the department shall continue the license for an additional 2-year period, unless sooner suspended or revoked. If the application is not timely filed, the department shall issue a warning to the licensee. If the licensee fails to apply for continuance of the license within 30 days after receipt of the warning, the department may revoke the license as provided in s. 48.715 (4) and (4m) (b).

Shea, Elisabeth

From: Liedl, Kimberly - DCF <Kimberly.Liedl@wisconsin.gov>
Sent: Wednesday, January 15, 2014 2:16 PM
To: Shea, Elisabeth
Subject: RE: Administrative rule bill

Yes.

From: Shea, Elisabeth [mailto:Elisabeth.Shea@legis.wisconsin.gov]
Sent: Wednesday, January 15, 2014 10:02 AM
To: Liedl, Kimberly - DCF
Subject: RE: Administrative rule bill

Hi Kimber,

Another question. Should the definition of "certification agency" in DCF 201.02(2m) match the definition in ch. 202?

Lis

From: Liedl, Kimberly - DCF [mailto:Kimberly.Liedl@wisconsin.gov]
Sent: Wednesday, January 15, 2014 9:06 AM
To: Shea, Elisabeth
Subject: FW: Administrative rule bill

Hi, Lis, the list of entities you've listed below is correct and the two entities you've identified that should now not be included in the list is also correct;

- Child care provider services unit in Milwaukee County under s. 49.826 – **DO NOT INCLUDE: this is a unit of DCF, so listing DCF in Milwaukee will allow this unit to certify child care operators.**
- County dept. of social services in Milwaukee County under s. 46.215 (does not include child welfare services administered by DCF under s. 48.48 (17)) – **DO NOT INCLUDE: this dept. does not perform child welfare services, so it would not certify child care operators.**

Thanks,
Kimber

From: Shea, Elisabeth [mailto:Elisabeth.Shea@legis.wisconsin.gov]
Sent: Tuesday, January 14, 2014 4:05 PM
To: Liedl, Kimberly - DCF
Subject: RE: Administrative rule bill

Hi Kimber,

Sorry I missed your phone call. Just want clarify one more time to make sure I know specifically which entities can certify child care operators. Below I listed all the entities that were either mentioned in the old definition or proposed in the new definition. I made a note of two that I think should not be included – let me know if I have this right:

- DCF in Milwaukee County (operates child welfare services in Milw. County under s. 48.48 (17))
- Child care provider services unit in Milwaukee County under s. 49.826 – **DO NOT INCLUDE: this is a unit of DCF, so listing DCF in Milwaukee will allow this unit to certify child care operators.**
- County dept. of social services in Milwaukee County under s. 46.215 (does not include child welfare services administered by DCF under s. 48.48 (17)) – **DO NOT INCLUDE: this dept. does not perform child welfare services, so it would not certify child care operators.**

- County dept. of social services under s. 46.22 (counties other than Milwaukee County)
- County dept. of human services under s. 46.23 (counties other than Milwaukee County)
- Tribal agencies
- Agencies contracting with the above entities to certify child care operators

Let me know if this is correct. Thanks.

Lis

From: Liedl, Kimberly - DCF [<mailto:Kimberly.Liedl@wisconsin.gov>]
Sent: Tuesday, January 14, 2014 3:18 PM
To: Shea, Elisabeth
Cc: Buschman, Sara - DCF
Subject: FW: Administrative rule bill

Hi, Lis, please use the definition in the second request:

the second request proposes replacing the term "county or tribal agency" with "certification agency" throughout the section, and defining it as "the department in a county having a population of 500,000 or more or any agency that has a contract with the department to certify child care operators under s. 48.651, Stats., and this chapter in a particular county or tribal area."

We also agree with your proposed definition of "certification agency" in the second paragraph. That it is an accurate definition.

Let me know if you have any additional questions.

Thanks,
Kimber

From: Shea, Elisabeth [<mailto:Elisabeth.Shea@legis.wisconsin.gov>]
Sent: Monday, January 13, 2014 10:41 AM
To: Liedl, Kimberly - DCF
Subject: RE: Administrative rule bill

Hi Kimber,

I'm working with Gordon on the changes to DCF 202, and I have a couple questions.

The first request you sent proposed expanding the definition of "county or tribal agency" in DCF 202.02 (4) to include the child care provider services unit established under s. 49.826. However, the second request proposes replacing the term "county or tribal agency" with "certification agency" throughout the section, and defining it as "the department in a county having a population of 500,000 or more or any agency that has a contract with the department to certify child care operators under s. 48.651, Stats., and this chapter in a particular county or tribal area." Which change would you like to make?

Also, the proposed definition of "certification agency," is ambiguous because it is not clear in this context what "the department" is. Would this be an accurate definition: "a county department of social services established under s. 46.215 or 46.22, Stats., a county department of human services established under s. 46.23, Stats., the child care provider services unit established under s. 49.826, Stats., a tribal agency, or any agency that contracts with any of these entities to certify child care operators under s. 48.651, Stats."?

Thanks!

Lis

Elisabeth H. Shea

Legislative Attorney

Wisconsin Legislative Reference Bureau

P.O. Box 2037

Madison, WI 53701-2037

(608) 266 - 5446

elisabeth.shea@legis.wisconsin.gov

From: Liedl, Kimberly - DCF [<mailto:Kimberly.Liedl@wisconsin.gov>]

Sent: Tuesday, January 07, 2014 1:59 PM

To: Malaise, Gordon

Cc: Buschman, Sara - DCF

Subject: RE: Administrative rule bill

Hi, Gordon, here's our second set of changes for the Right the Rules bill. Please let me know if you have any questions.

Thanks,

Kimber

From: Liedl, Kimberly - DCF

Sent: Friday, January 03, 2014 5:16 PM

To: Malaise, Gordon - LEGIS

Cc: Buschman, Sara - DCF

Subject: Administrative rule bill

Hi, Gordon, here is the beginning of our drafting instructions for our admin rule change bill. Please let me know if you have any questions. We will send the rest of the changes early next week.

Thanks and have a good weekend,

Kimber

Kimberly Liedl

Legislative Liaison

Department of Children and Families

201 East Washington Avenue

Madison, WI 53703

T: 608.261.8678

E: kimberly.liedl@wisconsin.gov



KF

10-1-16-14

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Do Not Soft

D-NOTE

by 1-17-14

Gen

- 1 AN ACT ...; relating to: rule-making procedures and amending various rules
- 2 promulgated by the Department of Children and Families governing the
- 3 certification of child care operators.

Analysis by the Legislative Reference Bureau

Child care certification

Under current law, the Department of Children and Families (DCF) regulates the certification of child care operators for the purpose of reimbursement under the Wisconsin Shares child care subsidy program. Under DCF's current rules, agencies that may certify child care operators are called "county and tribal agencies" and include county departments of social services, county departments of human services, and tribal agencies. This bill amends DCF rules to refer to agencies that certify child care operators as "certification agencies." The bill expands the definition to include DCF in a county with a population of 750,000 or more and any agency that certifies child care operators through a contract with DCF, a county department of social services, a county department of human services, or a tribal agency.

DCF's current rules allow any county or tribal agency's action to deny, suspend, revoke, or refuse to renew a child care operator's certification to be appealed under administrative procedures that apply to local units of government. The bill amends DCF rules to specify that an action by DCF in a county with a population of 750,000 or more to deny, suspend, revoke, or refuse to renew a child care operator's certification may be appealed under administrative procedures that apply to state agencies.

HAUPTA

DCF's current rules also require a family or in-home child care provider to demonstrate to a county or tribal agency that he or she is free from tuberculosis prior to certification or recertification, and allows the agency to accept tuberculosis test results only if administered up to 12 months before the certification application date. This bill amends DCF rules to allow a child care provider to demonstrate that he or she is free from tuberculosis prior to the date that provider began working with children if later than the certification date. The bill also amends DCF rules to allow a certification agency to accept the results of a tuberculosis test administered up to 12 months prior to the date the provider began working with children if later than the certification date.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** DCF 201.02 (2m) of the administrative code is amended to read:

2 DCF 201.02 (2m) "Certification agency" means the department in a county
3 having a population of 500,000 [✓]750,000 or more, a county department of social
4 services established under s. 46.22, Stats., a county department of human services
5 established under s. 46.23, Stats., a tribal agency, or any agency that has a contract
6 contracts with the department any of those entities to certify child care providers
7 under s. 48.651, Stats., and ch. DCF 202 in a particular county or tribal area.

8 **SECTION 2.** DCF 202.01 (2) of the administrative code is amended to read:

9 DCF 202.01 (2) APPLICABILITY. This chapter applies to ~~county and tribal~~
10 certification agencies and to all providers of child care who receive reimbursement
11 with state or federal child care funds and who are not required to be licensed under
12 s. 48.65, Stats., including providers of child care for 1 to 3 children, providers of child
13 care for a child in the child's home, and providers of child care for school-age children.

14 **SECTION 3.** DCF 202.02 (1) of the administrative [↓]code is repealed.

15 **SECTION 4.** DCF 202.02 (1s) of the administrative code is created to read:

16 DCF 202.02 (1s) "Certification agency" means the department in a county
17 having a population of 750,000 [✓]or more, a county department of social services [✓]

1 established under s. 46.22, Stats., a county department of human services
2 established under s. 46.23, Stats., a tribal agency, or any agency that contracts with
3 any of those entities to certify child care operators under s. 48.651, Stats.

4 SECTION 5. DCF 202.02 (2) of the administrative code is amended to read:

5 DCF 202.02 (2) "Certified child care home" or "home" means the residence in
6 which the certified child care operator provides care of children and which meets the
7 standards under s. DCF 202.08 for reimbursement of care by ~~county or tribal~~
8 certification agencies.

9 SECTION 6. DCF 202.02 (3h) of the administrative code is amended to read:

10 DCF 202.02 (3h) "Child care certification worker" means a person employed
11 by ~~a county, a governing body of a federally recognized American Indian tribe, or an~~
12 ~~agency under contract with a county or tribe~~ whose duties include determination of
13 eligibility for child care certification.

14 SECTION 7. DCF 202.02 (4) of the administrative code is repealed.

15 SECTION 8. DCF 202.04 (3) (a) of the administrative code is amended to read:

16 DCF 202.04 (3) (a) *Form.* Application for certification shall be made on a form
17 available from the ~~county or tribal~~ certification agency in the county or tribal
18 territory where the child care is provided. The applicant shall submit the completed
19 form to that ~~county or tribal~~ certification agency.

20 SECTION 9. DCF 202.04 (3) (d) of the administrative code is amended to read:

21 DCF 202.04 (3) (d) *Compliance with standards and certification.* The ~~county~~
22 ~~or tribal~~ certification agency shall process all certification applications as follows:

23 1. If the application is for certification under sub. (2) (a), the ~~county or tribal~~
24 certification agency shall review the application for compliance with standards
25 under s. DCF 202.08 prior to issuing a certificate.

1 2. If the application is for certification under sub. (2) (b), the ~~county or tribal~~[✓]
2 certification[✓] agency shall refer the application to a licensing representative in the
3 department regional office. The licensing representative shall determine whether
4 the applicant is in compliance with all standards under s. DCF 202.09 and report
5 back to the ~~county or tribal~~[✓] certification[✓] agency. The ~~county or tribal~~[✓] certification[✓]
6 agency may issue a certificate based on the licensing representative's report.

7 **SECTION 10.** DCF 202.04 (3) (e) (intro.) of the administrative code is amended
8 to read:

9 DCF 202.04 (3) (e) (intro.) *Approval.* Within 60 days after receiving a
10 completed application for certification or recertification and satisfactory
11 investigation and determination that the applicant is fit, the ~~county or tribal~~[✓]
12 certification[✓] agency shall either approve the application and issue a certificate or
13 deny the application. Fit "Fit" means the applicant displays the capacity to
14 successfully nurture and care for children and includes consideration of any of the
15 following:

16 **SECTION 11.** DCF 202.04 (3) (f) of the administrative code is amended to read:

17 DCF 202.04 (3) (f) The ~~county or tribal~~[✓] certification[✓] agency may backdate a
18 certificate of approval to the date that the ~~county or tribal~~[✓] certification[✓] agency
19 received the applicant's completed application for certification.

20 **SECTION 12.** DCF 202.04 (4) (a) of the administrative code is amended to read:

21 DCF 202.04 (4) (a) A ~~county or tribal~~[✓] certification[✓] agency may charge a fee for
22 family child care certification not to exceed 150 percent of the licensing fee for a
23 family child care center that provides care and supervision for 4 to 8 children, under
24 s. 48.65 (3) (a), Stats., plus the costs of criminal record checks required under s.
25 48.685, Stats.

1 **SECTION 13.** DCF 202.04 (4) (b) of the administrative code is amended to read:

2 DCF 202.04 (4) (b) The ~~county or tribal~~ certification agency may charge a fee
3 for school-age child care certification not to exceed the licensing fee for a group child
4 care center that provides care and supervision for 9 or more children under s. 48.65
5 (3) (a), Stats., plus the costs of criminal record checks required under s. 48.685, Stats.

6 **SECTION 14.** DCF 202.04 (5) (intro.) of the administrative code is amended to
7 read:

8 DCF 202.04 (5) (intro.) **CATEGORIES OF FAMILY CERTIFICATION.** Certification of a
9 provider by a ~~county or tribal~~ certification agency shall be Level I (regular) or Level
10 II (provisional) as follows:

11 **SECTION 15.** DCF 202.04 (6) (a) of the administrative code is amended to read:

12 DCF 202.04 (6) (a) The ~~county or tribal~~ certification agency responsible for
13 certification of a provider shall be determined by the geographic area in which the
14 child care is provided.

15 **SECTION 16.** DCF 202.04 (6) (b) of the administrative code is amended to read:

16 DCF 202.04 (6) (b) Certification issued to a provider by a ~~county or tribal~~
17 certification agency shall be accepted as valid by all other agencies authorized to
18 certify providers.

19 **SECTION 17.** DCF 202.04 (6) (c) of the administrative code is amended to read:

20 DCF 202.04 (6) (c) The ~~county or tribal~~ certification agency shall ensure that
21 each new day care certification worker completes the department-approved
22 certification training during the first 6 months of employment.

23 **SECTION 18.** DCF 202.04 (7) (a) of the administrative code is amended to read:

1 DCF 202.04 (7) (a) *Qualifications of certified child care operators.* ~~County and~~
2 ~~tribal~~ Certification agencies shall maintain records demonstrating child care
3 operator compliance with s. DCF 202.08 (1).

4 SECTION 19. DCF 202.04 (7) (b) 1. of the administrative code is amended to read:

5 DCF 202.04 (7) (b) 1. 'General.' ~~County and tribal~~ Certification agencies shall
6 help assure operator compliance with s. DCF 202.08 (2) to (12) in accordance with
7 this section.

8 SECTION 20. DCF 202.04 (7) (b) 2. (intro.) of the administrative code is amended
9 to read:

10 DCF 202.04 (7) (b) 2. (intro.) 'Required procedures.' A ~~county or tribal~~
11 certification agency shall:

12 SECTION 21. DCF 202.04 (7) (b) 3. (intro.) of the administrative code is amended
13 to read:

14 DCF 202.04 (7) (b) 3. (intro.) 'Optional procedures.' A ~~county or tribal~~
15 certification agency may:

16 SECTION 22. DCF 202.04 (7) (b) 3. e. of the administrative code is amended to
17 read:

18 DCF 202.04 (7) (b) 3. e. Require an evaluation and written statement by a
19 physician or licensed mental health professional of any person associated with the
20 care of children or any household resident if the ~~county or tribal~~ certification agency
21 has reason to believe that the person's physical or mental health may endanger
22 children in care. The ~~county or tribal~~ certification agency shall document what
23 reason it has to believe that the person's physical or mental health may endanger
24 children in care.

25 SECTION 23. DCF 202.04 (8) of the administrative code is amended to read:

1 DCF 202.04 (8) EXCEPTIONS TO PARTICULAR CERTIFICATION REQUIREMENTS. A
2 ~~county or tribal~~ certification agency may grant an exception to any standard in s.
3 DCF 202.08 or 202.09 if the ~~county or tribal~~ certification agency determines that an
4 alternative means meets the intent of the requirement, except for rules related to
5 criminal background investigation required under s. 48.685, Stats.

6 SECTION 24. DCF 202.04 (9) of the administrative code is amended to read:

7 DCF 202.04 (9) CERTIFICATION DECISION AFTER BACKGROUND REVIEW. The ~~county~~
8 ~~or tribal~~ certification agency shall conduct background reviews in accordance with
9 s. 48.685, Stats. For guidance in resolving issues that arise in particular cases, the
10 ~~county or tribal~~ certification agency shall follow ch. DHS 12, and the crimes table
11 incorporated into ch. DHS 12, and shall apply the standards that apply to licensed
12 child care facilities.

13 SECTION 25. DCF 202.05 (1) of the administrative code is amended to read:

14 DCF 202.05 (1) The ~~county or tribal~~ certification agency shall follow the
15 requirements for criminal history and child abuse record search that are contained
16 in s. 48.685, Stats., and ch. DHS 12, and the crimes table incorporated into ch. DHS
17 12, and shall apply the standards that apply to licensed child care facilities, except
18 the ~~county or tribal~~ certification agency shall require any prospective or current
19 employee, contractor under the control of the certified child care operator, volunteer,
20 or non-client resident to submit the completed background information form to the
21 ~~county or tribal~~ certification agency prior to initial certification and recertification.
22 In applying the provisions relating to rehabilitation decisions, all decisions and
23 review procedures shall be made and conducted by the ~~county or tribal~~ certification
24 agency.

25 SECTION 26. DCF 202.05 (2) of the administrative code is amended to read:

1 DCF 202.05 (2) Each ~~county or tribal~~ certification agency shall maintain its
2 records concerning each person whose certificate is denied, revoked, or not renewed
3 for a reason specified in s. 48.685 (4m) (a) 1. to 5., Stats. The ~~county or tribal~~
4 certification agency shall report this information to the department's bureau of early
5 childhood education. The ~~county or tribal~~ certification agency shall immediately
6 report the receipt of an application for rehabilitation review and the results of each
7 rehabilitation review to the office of legal counsel of the department of health
8 services.

9 **SECTION 27.** DCF 202.06 (1) (intro.) of the administrative code is amended to
10 read:

11 DCF 202.06 (1) (intro.) The ~~county or tribal~~ certification agency may deny,
12 suspend, revoke, or refuse to renew certification if any of the following apply:

13 **SECTION 28.** DCF 202.06 (1) (c) of the administrative code is amended to read:

14 DCF 202.06 (1) (c) The ~~county or tribal~~ certification agency determines there
15 is danger to the health, safety, or welfare of the children in care.

16 **SECTION 29.** DCF 202.06 (1) (e) of the administrative code is amended to read:

17 DCF 202.06 (1) (e) The child care operator fails to cooperate with the ~~certifying~~
18 certification agency.

19 **SECTION 30.** DCF 202.06 (1) (j) of the administrative code is amended to read:

20 202.06 (1) (j) The evaluation under s. DCF 202.04 (7) (b) 3. e. gives the ~~county~~
21 ~~or tribal~~ certification agency reasonable concern that the person's physical or mental
22 health may endanger children in care.

23 **SECTION 31.** DCF 202.06 (2) of the administrative code is amended to read:

24 DCF 202.06 (2) The ~~county or tribal~~ certification agency shall require a child
25 care operator to submit a new application for certification if the operator's previous

1 certification was denied, revoked, or not renewed for a reason in s. DCF 202.05 or
2 202.06 (1). The ~~county or tribal~~ [✓] certification agency may refuse to accept a new
3 application for 2 years after the date of the denial, revocation, or refusal to renew the
4 certification.

5 SECTION 32. DCF 202.06 (4) of the administrative code is amended to read:

6 DCF 202.06 (4) If a ~~county or tribal~~ [✓] certification agency denies, suspends,
7 revokes, or refuses to renew a certification, the ~~county or tribal~~ [✓] certification agency
8 shall notify the child care operator in writing and give reasons for the action. The
9 action of a county department of social services established under s. 46.22, Stats., or
10 a county department of human services established under s. 46.23, Stats., ^{is} ^{move}
11 reviewable pursuant to ^{move up} may be appealed under ch. 68, Stats., which provides for
12 administrative review of the decisions of local agencies. Tribal agencies shall use an
13 appeal process equivalent to the process in ch. 68, Stats. In a county with a
14 population of 750,000 or more, a certification agency's action may be appealed under
15 ch. 227, Stats., which provides for administrative review of the decisions of state
16 agencies.

17 SECTION 33. DCF 202.065 (intro.) of the administrative code is amended to
18 read:

19 DCF 202.065 (intro.) ^(B) Sanctions. If a certified child care operator violates the
20 provisions of this chapter, s. 48.685, Stats., or ch. DHS 12, the ~~county or tribal~~ [✓]
21 certification agency shall require the operator to submit a plan of correction for
22 violation in writing and may impose any or all of the following sanctions:

23 SECTION 34. DCF 202.065 (3) of the administrative code is amended to read:

1 DCF 202.065 (3) Suspend the operator's certification for not more than 60 days.
2 The certification agency shall either reinstate or revoke the certification by the date
3 that the suspension expires.

4 SECTION 35. DCF 202.07 of the administrative code is amended to read:

5 DCF 202.07 **Complaints.** Within 10 working days after a county or tribal
6 certification agency receives a complaint about a certified child care operator, the
7 county or tribal certification agency shall investigate that complaint.

8 SECTION 36. DCF 202.08 (1) (a) 3. of the administrative code is amended to read:

9 DCF 202.08 (1) (a) 3. Each family and in-home child care operator provider
10 shall demonstrate that he or she is free from tuberculosis prior to certification and
11 recertification or the date the provider began working with children, whichever is
12 later. The certification agency may accept results of a test administered up to 12
13 months before the application date or the date the provider began working with
14 children, whichever is later.

15 SECTION 37. DCF 202.08 (1) (b) 2. b. of the administrative code is amended to
16 read:

17 DCF 202.08 (1) (b) 2. b. A county or tribal certification agency may require up
18 to 5 hours of annual continuing education by a Level I (regular) certified provider
19 each year following Level I (regular) certification.

20 SECTION 38. DCF 202.08 (1) (b) 2. c. of the administrative code is amended to
21 read:

22 DCF 202.08 (1) (b) 2. c. Prior to issuing a Level I (regular) certification, the
23 county or tribal certification agency may require that an applicant has graduated
24 from high school, obtained a high school equivalency diploma under s. 115.29 (4),
25 Stats., or obtained a certificate of general education development under s. PI 5.04.

1 **SECTION 39.** DCF 202.08 (1) (c) (intro.) of the administrative code is amended
2 to read:

3 DCF 202.08 (1) (c) (intro.) *Reporting changes.* A certified family child care
4 operator shall report to the certification agency as soon as possible, but no later than
5 ~~the county or tribal~~ ^{plain} certification agency's next working day, ~~to the agency~~ any
6 changes that affect the certified family child care operator's eligibility for
7 certification under this chapter, including the following:

8 **SECTION 40.** DCF 202.08 (1) (d) of the administrative code is amended to read:

9 DCF 202.08 (1) (d) *Substitutes, employees, and volunteers.* A substitute,
10 employee, or volunteer for a Level I or II child care operator shall be approved by the
11 ~~county or tribal~~ [✓] certification agency before employment or volunteer work
12 commences. The ~~county or tribal~~ [✓] certification agency shall approve the substitute,
13 employee, or volunteer if the agency has verification that the substitute, employee,
14 or volunteer has met the standards under s. DCF 202.05, regarding the criminal
15 history and child abuse record search, and has completed the training on sudden
16 infant death syndrome and shaken baby syndrome and impacted babies required
17 under par. (b) 1.

18 **SECTION 41.** DCF 202.08 (1) (e) 3. of the administrative code is amended to read:

19 DCF 202.08 (1) (e) 3. Ensure that all information provided to the ~~county or~~ [✓]
20 ~~tribal~~ [✓] certification agency is current and accurate.

21 **SECTION 42.** DCF 202.08 (2) (a) 2m. of the administrative code is repealed.

22 **SECTION 43.** DCF 202.08 (2) (g) of the administrative code is amended to read:

23 DCF 202.08 (2) (g) The home shall have at least one telephone in working order
24 with a list of emergency numbers posted by each telephone, including numbers for
25 the rescue squad, police, fire station, emergency medical care, child protective

1 services agency, and poison control center. The ~~certifying~~ [✓]certification agency may
2 prohibit the use of a cellular phone as a primary phone. If a cellular phone is used
3 as a primary phone, it shall be operational during the hours of child care.

4 **SECTION 44.** DCF 202.08 (2) (o) of the administrative code is amended to read:

5 DCF 202.08 (2) (o) If the child care is provided in a rental property, the ~~provider~~
6 operator shall obtain permission from ~~his or her~~ the landlord to operate a child care
7 business.

8 **SECTION 45.** DCF 202.08 (4) (c) of the administrative code is amended to read:

9 DCF 202.08 (4) (c) The requirement under par. (a) does not apply to a child care
10 operator who requests from the ~~county or tribal~~ [✓]certification [✓]agency in writing an
11 exemption for a child based upon adherence by the child's parent to religious belief
12 in exclusive use of prayer or spiritual means for healing.

13 **SECTION 46.** DCF 202.09 (1m) (c) of the administrative code is amended to read:

14 DCF 202.09 (1m) (c) Ensure that all information provided to the ~~county or~~ [✓]
15 tribal certification [✓]agency is current and accurate.

16 **SECTION 47.** DCF 202.09 (2) (e) (intro.) of the administrative code is amended
17 to read:

18 DCF 202.09 (2) (e) (intro.) *Staff records.* The school-age child care program
19 shall maintain a record for each employee ~~which~~ that shall be available to the ~~county~~ [✓]
20 ~~or tribal~~ [✓]certification [✓]agency ~~and includes.~~ The record shall include all of the
21 following:

22 **SECTION 48.** DCF 202.09 (4) (a) 2. of the administrative code is amended to read:

23 DCF 202.09 (4) (a) 2. There shall be a report of inspection filed ~~in the county~~ [✓]
24 ~~or tribal~~ [✓]with the certification [✓]agency that indicates approval of the building by the
25 state department of safety and professional services or by a certified agent of that

1 department. The building shall comply with applicable state and local building
2 codes.

3 SECTION 49. DCF 202.09 (12) (d) of the administrative code is amended to read:

4 DCF 202.09 (12) (d) Any vehicle used by the program to transport children
5 shall be in safe operating condition and at 12-month intervals the school-age child
6 care program shall provide evidence of the vehicle's safe operating condition to the
7 ~~county or tribal~~ certification agency.

8 SECTION 50. DCF 202.09 (14) (intro.) of the administrative code is amended to
9 read:

10 DCF 202.09 (14) (intro.) INSURANCE. The program shall provide documentation
11 of insurance coverage by submitting to the ~~county or tribal~~ certification agency a
12 certificate of insurance reflecting current dates of coverage for:

(END)

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1 s. 227.10 does not apply to, any action or inaction of an agency, whether it would
2 otherwise meet the definition under this subsection, which:

3 SECTION 12. 227.11 (2) (intro.) of the statutes is amended to read:

4 227.11 (2) (intro.) Rule-making authority is expressly conferred on an agency
5 as follows:

6 SECTION 13. 227.265 of the statutes is created to read:

7 227.265 **Repeal or modification of rules.** If a bill to repeal or modify a rule
8 is enacted, the procedures under ss. 227.114 to 227.21 and 227.26 do not apply.
9 Instead, the legislative reference bureau shall publish the repeal or modification in
10 the Wisconsin administrative code and register as required under s. 35.93, and the
11 repeal or modification shall take effect as provided in s. 227.22.

12 SECTION 14. 227.27 (2) of the statutes is amended to read:

13 227.27 (2) The code shall be prima facie evidence in all courts and proceedings
14 as provided by s. 889.01, but this does not preclude reference to or, in case of a
15 discrepancy, control over a rule filed with the legislative reference bureau ~~or the~~
16 ~~secretary of state~~ under s. 227.20 or modified under s. 227.265, and the certified copy
17 of a rule shall also and in the same degree be prima facie evidence in all courts and
18 proceedings.

19 SECTION 15. **Effective dates.** This act takes effect on the day after publication,
20 except as follows:

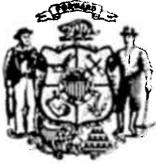
21 (1) The treatment of section 35.93 (2) (b) 4. and (c) 1. and (3) (e) (intro.) and 1.
22 of the statutes takes effect on January 1, 2015.

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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT ...; relating to: rulemaking procedures.**

Analysis by the Legislative Reference Bureau

Rule-making procedures

Current law sets forth a procedure for the promulgation of administrative rules (rules). Generally, that procedure consists of the following steps:

1. The agency planning to promulgate the rule prepares a statement of the scope of the proposed rule, which the governor and the agency head must approve before any state employee or official may perform any activity in connection with the drafting of the proposed rule.
2. The agency drafts the proposed rule, together with an economic impact analysis, plain language analysis, and fiscal estimate for the proposed rule, and submits those materials to the Legislative Council Staff for review.
3. Subject to certain exceptions, a public hearing is held on the proposed rule.
4. The final draft of the proposed rule is submitted to the governor for approval.
5. The final draft of the proposed rule, together with an economic impact analysis, plain language analysis, and fiscal estimate for the proposed rule, are submitted to the legislature for review by one standing committee in each house and by the Joint Committee for Review of Administrative Rules.
6. The proposed rule is filed with the Legislative Reference Bureau (LRB) for publication in the Wisconsin Administrative Code (code) and the Wisconsin Administrative Register (register), and, subject to certain exceptions, the rule becomes effective on the first day of the first month beginning after publication.

Under this bill, if a bill that repeals or modifies a rule is enacted, the ordinary rule-making procedures under current law do not apply. Instead, the LRB must

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publish the repeal or modification, in the code and the register, and the repeal or modification, subject to certain exceptions, takes effect on the first day of the first month beginning after publication.

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The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

(remainder of document)

1 SECTION 1. 13.92 (4) (bm) of the statutes is created to read:
2 13.92 (4) (bm) If 2 or more rules filed under s. 227.20 or modified under s.
3 227.265 affect the same unit of the Wisconsin administrative code without taking
4 cognizance of the effect thereon of the other rules and if the legislative reference
5 bureau finds that there is no mutual inconsistency in the changes made by each such
6 rule, the legislative reference bureau shall incorporate the changes made by each
7 rule into the text of the unit and document the incorporation in a note to the unit.
8 For each such incorporation, the legislative reference bureau shall include in a
9 correction bill a provision formally validating the incorporation. Section 227.27 (2)
10 is not affected by printing decisions made by the legislative reference bureau under
11 this paragraph.

12 SECTION 2. 13.92 (4) (c) of the statutes is amended to read:
13 13.92 (4) (c) The legislative reference bureau may insert in the Wisconsin
14 administrative code a note explaining any change made under par. (b) or (bm).

15 SECTION 3. 13.92 (4) (d) of the statutes is amended to read:
16 13.92 (4) (d) Sections 227.114, 227.116, 227.135, and 227.14 to 227.24 do not
17 apply to any change made by the legislative reference bureau under par. (b) or (bm).

18 SECTION 4. 13.92 (4) (e) of the statutes is amended to read:
19 13.92 (4) (e) The legislative reference bureau shall prepare and keep on file a
20 record of each change made under par. (b) or (bm).

1 **SECTION 5.** 13.92 (4) (f) of the statutes is amended to read:

2 13.92 (4) (f) The legislative reference bureau shall notify the agency involved
3 of each change made under par. (b) or (bm).

4 **SECTION 6.** 35.93 (2) (b) 4. of the statutes, as affected by 2013 Wisconsin Act 20,
5 is amended to read:

6 35.93 (2) (b) 4. Copies of all rules filed with the legislative reference bureau
7 under s. 227.20 (1) or modified under s. 227.265 since the compilation of the
8 preceding register, including emergency rules filed under s. 227.24 (3).

9 **SECTION 7.** 35.93 (2) (c) 1. of the statutes, as affected by 2013 Wisconsin Act 20,
10 is amended to read:

11 35.93 (2) (c) 1. Each chapter of the Wisconsin administrative code that has been
12 affected by rules filed with legislative reference bureau under s. 227.20 (1) or
13 modified under s. 227.265, in accordance with sub. (3) (e) 1.

14 **SECTION 8.** 35.93 (3) of the statutes is amended to read:

15 35.93 (3) The legislative reference bureau shall compile and deliver to the
16 department for printing copy for a register which shall contain all the rules filed
17 under s. 227.20 or modified under s. 227.265 since the compilation of rules for the
18 preceding issue of the register was made and those executive orders which are to be
19 in effect for more than 90 days or an informative summary thereof. The complete
20 register shall be compiled and published before the first day of each month and a
21 notice section of the register shall be compiled and published before the 15th day of
22 each month. Each issue of the register shall contain a title page with the name
23 "Wisconsin administrative register", the number and date of the register, and a table
24 of contents. Each page of the register shall also contain the date and number of the
25 register of which it is a part in addition to the other necessary code titles and page

1 numbers. The legislative reference bureau may include in the register such
2 instructions or information as in the bureau's judgment will help the user to correctly
3 make insertions and deletions in the code and to keep the code current.

4 **SECTION 9.** 35.93 (3) (e) (intro.) of the statutes, as affected by 2013 Wisconsin
5 Act 20, is amended to read:

6 35.93 (3) (e) (intro.) The legislative reference bureau shall incorporate into the
7 appropriate chapters of the Wisconsin administrative code each permanent rule filed
8 with the legislative reference bureau under s. 227.20 (1) or modified under s. 227.265
9 and, for each chapter of the administrative code affected by a rule, do all of the
10 following:

11 **SECTION 10.** 35.93 (3) (e) 1. of the statutes, as affected by 2013 Wisconsin Act
12 20, is amended to read:

13 35.93 (3) (e) 1. Publish the chapter in the appropriate end-of-month register
14 in accordance with the filing deadline for publication established in the rules
15 procedures manual published under s. 227.15 (7) or, in an end-of-month register
16 agreed to by the submitting agency and the legislative reference bureau, or, in the
17 case of a rule modified under s. 227.265, in the end-of-month register for the month
18 in which the bill modifying the rule is enacted.

19 **SECTION 11.** 227.01 (13) (intro.) of the statutes is amended to read:

20 227.01 (13) (intro.) "Rule" means a regulation, standard, statement of policy,
21 or general order of general application which has the effect of law and which is issued
22 by an agency to implement, interpret, or make specific legislation enforced or
23 administered by the agency or to govern the organization or procedure of the agency.
24 "Rule" includes a modification of a rule under s. 227.265. "Rule" does not include, and

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3930/P1dn
EHS: *ef*

Date

Kimber:

X In DCF s. 202.02 (1), "agency" is defined as having the same meaning as "county or tribal agency," which in this draft would change to "certification agency." However, the word "agency" appears in DCF ch. 202 in cases in which it does not refer to a "certification agency." For example, in the proposed definition for "certification agency," itself, and in DCF ss. 202.04 (7) (b) 2. h. and 202.06 (1) (d). Furthermore, the term "agency," referring to a certification agency, appears on its own only a few times. To avoid confusion, this draft repeals the definition of "agency," and changes "agency" to "certification agency" in those cases when it appears on its own. Let me know if this is not consistent with your intent.

X The request noted several places in DCF ch. 202 where "county or tribal agency" appears and should be changed to "certification agency." However, the term appears in a number of other provisions in DCF ch. 202 that were not noted in the request. This draft changes all such references to "certification agency." It also changes a couple of instances of "certifying agency" to "certification agency" for clarity.

X In DCF s. 202.08 (1) (a) 3., currently a child care provider must show he or she is free from tuberculosis prior to certification. The request proposes to allow a provider to demonstrate this before the provider begins working with children if that date is later than the initial certification. Currently, this section also allows an agency to accept TB test results up to 12 months before the application date. The request proposes to allow the agency to accept these results up to 12 months before the date the provider began working with children. For clarity I added "whichever is later." Let me know if this is not consistent with your intent.

X I found a few places in DCF ch. 202 where child care "operator" may have been used when child care "provider" might be more accurate, and vice versa. Based on the definitions of these terms, "certified child care operator" refers to the entity that operates the child care program, and "child care provider" refers to either the entity or its employee or volunteer. (See DCF ss. 202.02 (3) and 202.02 (3k).) Please note the following:

- Section*
1. DCF s. 202.04 (5) (intro.) refers to certification of a "provider," but the paragraphs below it refer to certification of an "operator." Should the introduction also refer to "operator"?

- Section
- X 2. DCF s) 202.04 (6) (a) and (b) also refer to certification of a "provider." Should these refer to an "operator" instead? ✓ ✓
 - X 3. DCF s) 202.08 (1) (b) 2. a. refers to a child care "operator" completing credits of child care training. Should this be a child care "provider" instead (i.e., an employee or volunteer)? ✓
 - X 4. DCF s) 202.08 (1) (b) 2. b. currently refers to a child care "provider" completing credits of child care training, but the request proposes to change this to "operator." Is "provider" more accurate? This proposed change has not been made in this draft. ✓

Please let me know if you have any questions.

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**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3930/P1dn
EHS:kjf:jf

January 17, 2014

Kimber:

In s. DCF 202.02 (1), "agency" is defined as having the same meaning as "county or tribal agency," which in this draft would change to "certification agency." However, the word "agency" appears in ch. DCF 202 in cases in which it does not refer to a "certification agency." For example, in the proposed definition for "certification agency," itself, and in ss. DCF 202.04 (7) (b) 2. h. and 202.06 (1) (d). Furthermore, the term "agency," referring to a certification agency, appears on its own only a few times. To avoid confusion, this draft repeals the definition of "agency," and changes "agency" to "certification agency" in those cases when it appears on its own. Let me know if this is not consistent with your intent.

The request noted several places in ch. DCF 202 where "county or tribal agency" appears and should be changed to "certification agency." However, the term appears in a number of other provisions in ch. DCF 202 that were not noted in the request. This draft changes all such references to "certification agency." It also changes a couple of instances of "certifying agency" to "certification agency" for clarity.

In s. DCF 202.08 (1) (a) 3., currently a child care provider must show he or she is free from tuberculosis prior to certification. The request proposes to allow a provider to demonstrate this before the provider begins working with children if that date is later than the initial certification. Currently, this section also allows an agency to accept TB test results up to 12 months before the application date. The request proposes to allow the agency to accept these results up to 12 months before the date the provider began working with children. For clarity I added "whichever is later." Let me know if this is not consistent with your intent.

I found a few places in ch. DCF 202 where child care "operator" may have been used when child care "provider" might be more accurate, and vice versa. Based on the definitions of these terms, "certified child care operator" refers to the entity that operates the child care program, and "child care provider" refers to either the entity or its employee or volunteer. (See ss. DCF 202.02 (3) and 202.02 (3k).) Please note the following:

1. Section DCF 202.04 (5) (intro.) refers to certification of a "provider," but the paragraphs below it refer to certification of an "operator." Should the introduction also refer to "operator"?

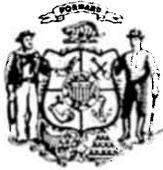
2. Section DCF 202.04 (6) (a) and (b) also refer to certification of a "provider." Should these refer to an "operator" instead?

3. Section DCF 202.08 (1) (b) 2. a. refers to a child care "operator" completing credits of child care training. Should this be a child care "provider" instead (i.e., an employee or volunteer)?

4. Section DCF 202.08 (1) (b) 2. b. currently refers to a child care "provider" completing credits of child care training, but the request proposes to change this to "operator." Is "provider" more accurate? This proposed change has not been made in this draft.

Please let me know if you have any questions.

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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT** *to amend* 13.92 (4) (c), 13.92 (4) (d), 13.92 (4) (e), 13.92 (4) (f), 35.93 (2)
2 (b) 4., 35.93 (2) (c) 1., 35.93 (3), 35.93 (3) (e) (intro.), 35.93 (3) (e) 1., 227.01 (13)
3 (intro.), 227.11 (2) (intro.) and 227.27 (2); and *to create* 13.92 (4) (bm) and
4 227.265 of the statutes; **relating to:** rule-making procedures and amending
5 various rules promulgated by the Department of Children and Families
6 governing the certification of child care operators.

Analysis by the Legislative Reference Bureau

Rule-making procedures

Current law sets forth a procedure for the promulgation of administrative rules (rules). Generally, that procedure consists of the following steps:

1. The agency planning to promulgate the rule prepares a statement of the scope of the proposed rule, which the governor and the agency head must approve before any state employee or official may perform any activity in connection with the drafting of the proposed rule.

2. The agency drafts the proposed rule, together with an economic impact analysis, plain language analysis, and fiscal estimate for the proposed rule, and submits those materials to the Legislative Council Staff for review.

3. Subject to certain exceptions, a public hearing is held on the proposed rule.

4. The final draft of the proposed rule is submitted to the governor for approval.

5. The final draft of the proposed rule, together with an economic impact analysis, plain language analysis, and fiscal estimate for the proposed rule, are

submitted to the legislature for review by one standing committee in each house and by the Joint Committee for Review of Administrative Rules.

6. The proposed rule is filed with the Legislative Reference Bureau (LRB) for publication in the Wisconsin Administrative Code (code) and the Wisconsin Administrative Register (register), and, subject to certain exceptions, the rule becomes effective on the first day of the first month beginning after publication.

Under this bill, if a bill that repeals or modifies a rule is enacted, the ordinary rule-making procedures under current law do not apply. Instead, the LRB must publish the repeal or modification, in the code and the register, and the repeal or modification, subject to certain exceptions, takes effect on the first day of the first month beginning after publication.

Child care certification

Under current law, the Department of Children and Families (DCF) regulates the certification of child care operators for the purpose of reimbursement under the Wisconsin Shares child care subsidy program. Under DCF's current rules, agencies that may certify child care operators are called "county and tribal agencies" and include county departments of social services, county departments of human services, and tribal agencies. This bill amends DCF rules to refer to agencies that certify child care operators as "certification agencies." The bill expands the definition to include DCF in a county with a population of 750,000 or more and any agency that certifies child care operators through a contract with DCF, a county department of social services, a county department of human services, or a tribal agency.

DCF's current rules allow any county or tribal agency's action to deny, suspend, revoke, or refuse to renew a child care operator's certification to be appealed under administrative procedures that apply to local units of government. The bill amends DCF rules to specify that an action by DCF in a county with a population of 750,000 or more to deny, suspend, revoke, or refuse to renew a child care operator's certification may be appealed under administrative procedures that apply to state agencies.

DCF's current rules also require a family or in-home child care provider to demonstrate to a county or tribal agency that he or she is free from tuberculosis prior to certification or recertification, and allows the agency to accept tuberculosis test results only if administered up to 12 months before the certification application date. This bill amends DCF rules to allow a child care provider to demonstrate that he or she is free from tuberculosis prior to the date that provider began working with children if later than the certification date. The bill also amends DCF rules to allow a certification agency to accept the results of a tuberculosis test administered up to 12 months prior to the date the provider began working with children if later than the certification date.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 13.92 (4) (bm) of the statutes is created to read:

2 13.92 (4) (bm) If 2 or more rules filed under s. 227.20 or modified under s.
3 227.265 affect the same unit of the Wisconsin administrative code without taking
4 cognizance of the effect thereon of the other rules and if the legislative reference
5 bureau finds that there is no mutual inconsistency in the changes made by each such
6 rule, the legislative reference bureau shall incorporate the changes made by each
7 rule into the text of the unit and document the incorporation in a note to the unit.
8 For each such incorporation, the legislative reference bureau shall include in a
9 correction bill a provision formally validating the incorporation. Section 227.27 (2)
10 is not affected by printing decisions made by the legislative reference bureau under
11 this paragraph.

12 **SECTION 2.** 13.92 (4) (c) of the statutes is amended to read:

13 13.92 (4) (c) The legislative reference bureau may insert in the Wisconsin
14 administrative code a note explaining any change made under par. (b) or (bm).

15 **SECTION 3.** 13.92 (4) (d) of the statutes is amended to read:

16 13.92 (4) (d) Sections 227.114, 227.116, 227.135, and 227.14 to 227.24 do not
17 apply to any change made by the legislative reference bureau under par. (b) or (bm).

18 **SECTION 4.** 13.92 (4) (e) of the statutes is amended to read:

19 13.92 (4) (e) The legislative reference bureau shall prepare and keep on file a
20 record of each change made under par. (b) or (bm).

21 **SECTION 5.** 13.92 (4) (f) of the statutes is amended to read:

22 13.92 (4) (f) The legislative reference bureau shall notify the agency involved
23 of each change made under par. (b) or (bm).

24 **SECTION 6.** 35.93 (2) (b) 4. of the statutes, as affected by 2013 Wisconsin Act 20,
25 is amended to read:

1 35.93 (2) (b) 4. Copies of all rules filed with the legislative reference bureau
2 under s. 227.20 (1) or modified under s. 227.265 since the compilation of the
3 preceding register, including emergency rules filed under s. 227.24 (3).

4 **SECTION 7.** 35.93 (2) (c) 1. of the statutes, as affected by 2013 Wisconsin Act 20,
5 is amended to read:

6 35.93 (2) (c) 1. Each chapter of the Wisconsin administrative code that has been
7 affected by rules filed with legislative reference bureau under s. 227.20 (1) or
8 modified under s. 227.265, in accordance with sub. (3) (e) 1.

9 **SECTION 8.** 35.93 (3) of the statutes is amended to read:

10 35.93 (3) The legislative reference bureau shall compile and deliver to the
11 department for printing copy for a register which shall contain all the rules filed
12 under s. 227.20 or modified under s. 227.265 since the compilation of rules for the
13 preceding issue of the register was made and those executive orders which are to be
14 in effect for more than 90 days or an informative summary thereof. The complete
15 register shall be compiled and published before the first day of each month and a
16 notice section of the register shall be compiled and published before the 15th day of
17 each month. Each issue of the register shall contain a title page with the name
18 "Wisconsin administrative register", the number and date of the register, and a table
19 of contents. Each page of the register shall also contain the date and number of the
20 register of which it is a part in addition to the other necessary code titles and page
21 numbers. The legislative reference bureau may include in the register such
22 instructions or information as in the bureau's judgment will help the user to correctly
23 make insertions and deletions in the code and to keep the code current.

24 **SECTION 9.** 35.93 (3) (c) (intro.) of the statutes, as affected by 2013 Wisconsin
25 Act 20, is amended to read:

1 35.93 (3) (e) (intro.) The legislative reference bureau shall incorporate into the
2 appropriate chapters of the Wisconsin administrative code each permanent rule filed
3 with the legislative reference bureau under s. 227.20 (1) or modified under s. 227.265
4 and, for each chapter of the administrative code affected by a rule, do all of the
5 following:

6 **SECTION 10.** 35.93 (3) (e) 1. of the statutes, as affected by 2013 Wisconsin Act
7 20, is amended to read:

8 35.93 (3) (e) 1. Publish the chapter in the appropriate end-of-month register
9 in accordance with the filing deadline for publication established in the rules
10 procedures manual published under s. 227.15 (7) ~~or~~, in an end-of-month register
11 agreed to by the submitting agency and the legislative reference bureau, or, in the
12 case of a rule modified under s. 227.265, in the end-of-month register for the month
13 in which the bill modifying the rule is enacted.

14 **SECTION 11.** 227.01 (13) (intro.) of the statutes is amended to read:

15 227.01 (13) (intro.) "Rule" means a regulation, standard, statement of policy,
16 or general order of general application which has the effect of law and which is issued
17 by an agency to implement, interpret, or make specific legislation enforced or
18 administered by the agency or to govern the organization or procedure of the agency.
19 "Rule" includes a modification of a rule under s. 227.265. "Rule" does not include, and
20 s. 227.10 does not apply to, any action or inaction of an agency, whether it would
21 otherwise meet the definition under this subsection, which:

22 **SECTION 12.** 227.11 (2) (intro.) of the statutes is amended to read:

23 227.11 (2) (intro.) Rule-making authority is expressly conferred on an agency
24 as follows:

25 **SECTION 13.** 227.265 of the statutes is created to read:

1 **227.265 Repeal or modification of rules.** If a bill to repeal or modify a rule
2 is enacted, the procedures under ss. 227.114 to 227.21 and 227.26 do not apply.
3 Instead, the legislative reference bureau shall publish the repeal or modification in
4 the Wisconsin administrative code and register as required under s. 35.93, and the
5 repeal or modification shall take effect as provided in s. 227.22.

6 **SECTION 14.** 227.27 (2) of the statutes is amended to read:

7 **227.27 (2)** The code shall be prima facie evidence in all courts and proceedings
8 as provided by s. 889.01, but this does not preclude reference to or, in case of a
9 discrepancy, control over a rule filed with the legislative reference bureau ~~or the~~
10 ~~secretary of state~~ under s. 227.20 or modified under s. 227.265, and the certified copy
11 of a rule shall also and in the same degree be prima facie evidence in all courts and
12 proceedings.

13 **SECTION 15.** DCF 201.02 (2m) of the administrative code is amended to read:

14 DCF 201.02 (2m) "Certification agency" means the department in a county
15 having a population of ~~500,000~~ 750,000 or more, a county department of social
16 services established under s. 46.22, Stats., a county department of human services
17 established under s. 46.23, Stats., a tribal agency, or any agency that has a contract
18 contracts with the department any of those entities to certify child care providers
19 under s. 48.651, Stats., ~~and ch. DCF 202 in a particular county or tribal area.~~

20 **SECTION 16.** DCF 202.01 (2) of the administrative code is amended to read:

21 DCF 202.01 (2) **APPLICABILITY.** This chapter applies to ~~county and tribal~~
22 certification agencies and to all providers of child care who receive reimbursement
23 with state or federal child care funds and who are not required to be licensed under
24 s. 48.65, Stats., including providers of child care for 1 to 3 children, providers of child
25 care for a child in the child's home, and providers of child care for school-age children.

1 **SECTION 17.** DCF 202.02 (1) of the administrative code is repealed.

2 **SECTION 18.** DCF 202.02 (1s) of the administrative code is created to read:

3 DCF 202.02 (1s) "Certification agency" means the department in a county
4 having a population of 750,000 or more, a county department of social services
5 established under s. 46.22, Stats., a county department of human services
6 established under s. 46.23, Stats., a tribal agency, or any agency that contracts with
7 any of those entities to certify child care operators under s. 48.651, Stats.

8 **SECTION 19.** DCF 202.02 (2) of the administrative code is amended to read:

9 DCF 202.02 (2) "Certified child care home" or "home" means the residence in
10 which the certified child care operator provides care of children and which meets the
11 standards under s. DCF 202.08 for reimbursement of care by ~~county or tribal~~
12 certification agencies.

13 **SECTION 20.** DCF 202.02 (3h) of the administrative code is amended to read:

14 DCF 202.02 (3h) "Child care certification worker" means a person employed
15 by ~~a county, a governing body of a federally-recognized American Indian tribe, or~~
16 ~~an agency under contract with a county or tribe~~ whose duties include determination
17 of eligibility for child care certification.

18 **SECTION 21.** DCF 202.02 (4) of the administrative code is repealed.

19 **SECTION 22.** DCF 202.04 (3) (a) of the administrative code is amended to read:

20 DCF 202.04 (3) (a) *Form.* Application for certification shall be made on a form
21 available from the ~~county or tribal~~ certification agency in the county or tribal
22 territory where the child care is provided. The applicant shall submit the completed
23 form to that ~~county or tribal~~ certification agency.

24 **SECTION 23.** DCF 202.04 (3) (d) of the administrative code is amended to read:

1 DCF 202.04 (3) (d) *Compliance with standards and certification*. The ~~county~~
2 ~~or tribal~~ certification agency shall process all certification applications as follows:

3 1. If the application is for certification under sub. (2) (a), the ~~county or tribal~~
4 certification agency shall review the application for compliance with standards
5 under s. DCF 202.08 prior to issuing a certificate.

6 2. If the application is for certification under sub. (2) (b), the ~~county or tribal~~
7 certification agency shall refer the application to a licensing representative in the
8 department regional office. The licensing representative shall determine whether
9 the applicant is in compliance with all standards under s. DCF 202.09 and report
10 back to the ~~county or tribal~~ certification agency. The ~~county or tribal~~ certification
11 agency may issue a certificate based on the licensing representative's report.

12 **SECTION 24.** DCF 202.04 (3) (e) (intro.) of the administrative code is amended
13 to read:

14 DCF 202.04 (3) (e) *Approval*. (intro.) Within 60 days after receiving a
15 completed application for certification or recertification and satisfactory
16 investigation and determination that the applicant is fit, the ~~county or tribal~~
17 certification agency shall either approve the application and issue a certificate or
18 deny the application. ~~Fit~~ “Fit” means the applicant displays the capacity to
19 successfully nurture and care for children and includes consideration of any of the
20 following:

21 **SECTION 25.** DCF 202.04 (3) (f) of the administrative code is amended to read:

22 DCF 202.04 (3) (f) The ~~county or tribal~~ certification agency may backdate a
23 certificate of approval to the date that the ~~county or tribal~~ certification agency
24 received the applicant's completed application for certification.

25 **SECTION 26.** DCF 202.04 (4) (a) of the administrative code is amended to read:

1 DCF 202.04 (4) (a) A ~~county or tribal~~ certification agency may charge a fee for
2 family child care certification not to exceed 150 percent of the licensing fee for a
3 family child care center that provides care and supervision for 4 to 8 children, under
4 s. 48.65 (3) (a), Stats., plus the costs of criminal record checks required under s.
5 48.685, Stats.

6 **SECTION 27.** DCF 202.04 (4) (b) of the administrative code is amended to read:

7 DCF 202.04 (4) (b) The ~~county or tribal~~ certification agency may charge a fee
8 for school-age child care certification not to exceed the licensing fee for a group child
9 care center that provides care and supervision for 9 or more children under s. 48.65
10 (3) (a), Stats., plus the costs of criminal record checks required under s. 48.685, Stats.

11 **SECTION 28.** DCF 202.04 (5) (intro.) of the administrative code is amended to
12 read:

13 DCF 202.04 (5) CATEGORIES OF FAMILY CERTIFICATION. (intro.) Certification of
14 a provider by a ~~county or tribal~~ certification agency shall be Level I (regular) or Level
15 II (provisional) as follows:

16 **SECTION 29.** DCF 202.04 (6) (a) of the administrative code is amended to read:

17 DCF 202.04 (6) (a) The ~~county or tribal~~ certification agency responsible for
18 certification of a provider shall be determined by the geographic area in which the
19 child care is provided.

20 **SECTION 30.** DCF 202.04 (6) (b) of the administrative code is amended to read:

21 DCF 202.04 (6) (b) Certification issued to a provider by a ~~county or tribal~~
22 certification agency shall be accepted as valid by all other agencies authorized to
23 certify providers.

24 **SECTION 31.** DCF 202.04 (6) (c) of the administrative code is amended to read:

1 DCF 202.04 (6) (c) The ~~county or tribal~~ certification agency shall ensure that
2 each new day care certification worker completes the department-approved
3 certification training during the first 6 months of employment.

4 **SECTION 32.** DCF 202.04 (7) (a) of the administrative code is amended to read:

5 DCF 202.04 (7) (a) *Qualifications of certified child care operators.* ~~County and~~
6 tribal Certification agencies shall maintain records demonstrating child care
7 operator compliance with s. DCF 202.08 (1).

8 **SECTION 33.** DCF 202.04 (7) (b) 1. of the administrative code is amended to read:

9 DCF 202.04 (7) (b) 1. 'General.' ~~County and tribal~~ Certification agencies shall
10 help assure operator compliance with s. DCF 202.08 (2) to (12) in accordance with
11 this section.

12 **SECTION 34.** DCF 202.04 (7) (b) 2. (intro.) of the administrative code is amended
13 to read:

14 DCF 202.04 (7) (b) 2. 'Required procedures.' (intro.) A ~~county or tribal~~
15 certification agency shall:

16 **SECTION 35.** DCF 202.04 (7) (b) 3. (intro.) of the administrative code is amended
17 to read:

18 DCF 202.04 (7) (b) 3. 'Optional procedures.' (intro.) A ~~county or tribal~~
19 certification agency may:

20 **SECTION 36.** DCF 202.04 (7) (b) 3. e. of the administrative code is amended to
21 read:

22 DCF 202.04 (7) (b) 3. e. Require an evaluation and written statement by a
23 physician or licensed mental health professional of any person associated with the
24 care of children or any household resident if the ~~county or tribal~~ certification agency
25 has reason to believe that the person's physical or mental health may endanger

1 children in care. The ~~county or tribal~~ certification agency shall document what
2 reason it has to believe that the person's physical or mental health may endanger
3 children in care.

4 **SECTION 37.** DCF 202.04 (8) of the administrative code is amended to read:

5 DCF 202.04 (8) EXCEPTIONS TO PARTICULAR CERTIFICATION REQUIREMENTS. A
6 ~~county or tribal~~ certification agency may grant an exception to any standard in s.
7 DCF 202.08 or 202.09 if the ~~county or tribal~~ certification agency determines that an
8 alternative means meets the intent of the requirement, except for rules related to
9 criminal background investigation required under s. 48.685, Stats.

10 **SECTION 38.** DCF 202.04 (9) of the administrative code is amended to read:

11 DCF 202.04 (9) CERTIFICATION DECISION AFTER BACKGROUND REVIEW. The ~~county~~
12 ~~or tribal~~ certification agency shall conduct background reviews in accordance with
13 s. 48.685, Stats. For guidance in resolving issues that arise in particular cases, the
14 ~~county or tribal~~ certification agency shall follow ch. DHS 12, and the crimes table
15 incorporated into ch. DHS 12, and shall apply the standards that apply to licensed
16 child care facilities.

17 **SECTION 39.** DCF 202.05 (1) of the administrative code is amended to read:

18 DCF 202.05 (1) The ~~county or tribal~~ certification agency shall follow the
19 requirements for criminal history and child abuse record search that are contained
20 in s. 48.685, Stats., and ch. DHS 12, and the crimes table incorporated into ch. DHS
21 12, and shall apply the standards that apply to licensed child care facilities, except
22 the ~~county or tribal~~ certification agency shall require any prospective or current
23 employee, contractor under the control of the certified child care operator, volunteer,
24 or non-client resident to submit the completed background information form to the
25 ~~county or tribal~~ certification agency prior to initial certification and recertification.

1 In applying the provisions relating to rehabilitation decisions, all decisions and
2 review procedures shall be made and conducted by the ~~county or tribal~~ certification
3 agency.

4 **SECTION 40.** DCF 202.05 (2) of the administrative code is amended to read:

5 DCF 202.05 (2) Each ~~county or tribal~~ certification agency shall maintain its
6 records concerning each person whose certificate is denied, revoked, or not renewed
7 for a reason specified in s. 48.685 (4m) (a) 1. to 5., Stats. The ~~county or tribal~~
8 certification agency shall report this information to the department's bureau of early
9 childhood education. The ~~county or tribal~~ certification agency shall immediately
10 report the receipt of an application for rehabilitation review and the results of each
11 rehabilitation review to the office of legal counsel of the department of health
12 services.

13 **SECTION 41.** DCF 202.06 (1) (intro.) of the administrative code is amended to
14 read:

15 DCF 202.06 (1) (intro.) The ~~county or tribal~~ certification agency may deny,
16 suspend, revoke, or refuse to renew certification if any of the following apply:

17 **SECTION 42.** DCF 202.06 (1) (c) of the administrative code is amended to read:

18 DCF 202.06 (1) (c) The ~~county or tribal~~ certification agency determines there
19 is danger to the health, safety, or welfare of the children in care.

20 **SECTION 43.** DCF 202.06 (1) (e) of the administrative code is amended to read:

21 DCF 202.06 (1) (e) The child care operator fails to cooperate with the ~~certifying~~
22 certification agency.

23 **SECTION 44.** DCF 202.06 (1) (j) of the administrative code is amended to read:

1 202.06 (1) (j) The evaluation under s. DCF 202.04 (7) (b) 3. e. gives the ~~county~~
2 ~~or tribal~~ certification agency reasonable concern that the person's physical or mental
3 health may endanger children in care.

4 **SECTION 45.** DCF 202.06 (2) of the administrative code is amended to read:

5 DCF 202.06 (2) The ~~county or tribal~~ certification agency shall require a child
6 care operator to submit a new application for certification if the operator's previous
7 certification was denied, revoked, or not renewed for a reason in s. DCF 202.05 or
8 202.06 (1). The ~~county or tribal~~ certification agency may refuse to accept a new
9 application for 2 years after the date of the denial, revocation, or refusal to renew the
10 certification.

11 **SECTION 46.** DCF 202.06 (4) of the administrative code is amended to read:

12 DCF 202.06 (4) If a ~~county or tribal~~ certification agency denies, suspends,
13 revokes, or refuses to renew a certification, the ~~county or tribal~~ certification agency
14 shall notify the child care operator in writing and give reasons for the action. The
15 action is ~~reviewable pursuant to~~ of a county department of social services established
16 under s. 46.22, Stats., or a county department of human services established under
17 s. 46.23, Stats., may be appealed under ch. 68, Stats., which provides for
18 administrative review of the decisions of local agencies. Tribal agencies shall use an
19 appeal process equivalent to the process in ch. 68, Stats. In a county with a
20 population of 750,000 or more, a certification agency's action may be appealed under
21 ch. 227, Stats., which provides for administrative review of the decisions of state
22 agencies.

23 **SECTION 47.** DCF 202.065 (intro.) of the administrative code is amended to
24 read:

1 **DCF 202.065 Sanctions.** (intro.) If a certified child care operator violates the
2 provisions of this chapter, s. 48.685, Stats., or ch. DHS 12, the ~~county or tribal~~
3 certification agency shall require the operator to submit a plan of correction for
4 violation in writing and may impose any or all of the following sanctions.

5 **SECTION 48.** DCF 202.065 (3) of the administrative code is amended to read:

6 DCF 202.065 (3) Suspend the operator's certification for not more than 60 days.
7 The certification agency shall either reinstate or revoke the certification by the date
8 that the suspension expires.

9 **SECTION 49.** DCF 202.07 of the administrative code is amended to read:

10 **DCF 202.07 Complaints.** Within 10 working days after a ~~county or tribal~~
11 certification agency receives a complaint about a certified child care operator, the
12 ~~county or tribal~~ certification agency shall investigate that complaint.

13 **SECTION 50.** DCF 202.08 (1) (a) 3. of the administrative code is amended to read:

14 DCF 202.08 (1) (a) 3. Each family and in-home child care ~~operator~~ provider
15 shall demonstrate that he or she is free from tuberculosis prior to certification and
16 ~~recertification or the date the provider began working with children, whichever is~~
17 later. The certification agency may accept results of a test administered up to 12
18 months before the application date or the date the provider began working with
19 children, whichever is later.

20 **SECTION 51.** DCF 202.08 (1) (b) 2. b. of the administrative code is amended to
21 read:

22 DCF 202.08 (1) (b) 2. b. A ~~county or tribal~~ certification agency may require up
23 to 5 hours of annual continuing education by a Level I (regular) certified provider
24 each year following Level I (regular) certification.

1 **SECTION 52.** DCF 202.08 (1) (b) 2. c. of the administrative code is amended to
2 read:

3 DCF 202.08 (1) (b) 2. c. Prior to issuing a Level I (regular) certification, the
4 ~~county or tribal~~ certification agency may require that an applicant has graduated
5 from high school, obtained a high school equivalency diploma under s. 115.29 (4),
6 Stats., or obtained a certificate of general education development under s. PI 5.04.

7 **SECTION 53.** DCF 202.08 (1) (c) (intro.) of the administrative code is amended
8 to read:

9 DCF 202.08 (1) (c) *Reporting changes.* (intro.) A certified family child care
10 operator shall report to the certification agency as soon as possible, but no later than
11 the ~~county or tribal~~ certification agency's next working day, ~~to the agency~~ any
12 changes that affect the certified family child care operator's eligibility for
13 certification under this chapter, including the following:

14 **SECTION 54.** DCF 202.08 (1) (d) of the administrative code is amended to read:

15 DCF 202.08 (1) (d) *Substitutes, employees, and volunteers.* A substitute,
16 employee, or volunteer for a Level I or II child care operator shall be approved by the
17 ~~county or tribal~~ certification agency before employment or volunteer work
18 commences. The ~~county or tribal~~ certification agency shall approve the substitute,
19 employee, or volunteer if the agency has verification that the substitute, employee,
20 or volunteer has met the standards under s. DCF 202.05, regarding the criminal
21 history and child abuse record search, and has completed the training on sudden
22 infant death syndrome and shaken baby syndrome and impacted babies required
23 under par. (b) 1.

24 **SECTION 55.** DCF 202.08 (1) (e) 3. of the administrative code is amended to read:

1 DCF 202.08 (1) (e) 3. Ensure that all information provided to the ~~county or~~
2 ~~tribal~~ certification agency is current and accurate.

3 **SECTION 56.** DCF 202.08 (2) (a) 2m. of the administrative code is repealed.

4 **SECTION 57.** DCF 202.08 (2) (g) of the administrative code is amended to read:

5 DCF 202.08 (2) (g) The home shall have at least one telephone in working order
6 with a list of emergency numbers posted by each telephone, including numbers for
7 the rescue squad, police, fire station, emergency medical care, child protective
8 services agency, and poison control center. The ~~certifying~~ certification agency may
9 prohibit the use of a cellular phone as a primary phone. If a cellular phone is used
10 as a primary phone, it shall be operational during the hours of child care.

11 **SECTION 58.** DCF 202.08 (2) (o) of the administrative code is amended to read:

12 DCF 202.08 (2) (o) If the child care is provided in a rental property, the ~~provider~~
13 operator shall obtain permission from ~~his or her~~ the landlord to operate a child care
14 business.

15 **SECTION 59.** DCF 202.08 (4) (c) of the administrative code is amended to read:

16 DCF 202.08 (4) (c) The requirement under par. (a) does not apply to a child care
17 operator who requests from the ~~county or tribal~~ certification agency in writing an
18 exemption for a child based upon adherence by the child's parent to religious belief
19 in exclusive use of prayer or spiritual means for healing.

20 **SECTION 60.** DCF 202.09 (1m) (c) of the administrative code is amended to read:

21 DCF 202.09 (1m) (c) Ensure that all information provided to the ~~county or~~
22 ~~tribal~~ certification agency is current and accurate.

23 **SECTION 61.** DCF 202.09 (2) (e) (intro.) of the administrative code is amended
24 to read:

