



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-3235/1
TJD:ahe

2017 ASSEMBLY BILL 336

May 19, 2017 - Introduced by COMMITTEE ON HEALTH. Referred to Committee on Health.

1 **AN ACT relating to:** elimination of rules related to the Department of Children
2 and Families from the Department of Health Services' rules regarding
3 caregiver background checks.

Analysis by the Legislative Reference Bureau

This bill removes from the Department of Health Services' code chapter regarding caregiver background checks the references pertaining only to the Department of Children and Families and makes technical changes. DCF promulgated its own rules regarding caregiver background checks for facilities regulated by it.

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

4 **SECTION 1.** DHS 12.01 of the administrative code is amended to read:
5 **DHS 12.01 Authority and purpose.** This chapter is promulgated under the
6 authority of ~~s. 48.685 (1) (ag) 1. a., (2) (d), (4), (5) (a), (6) (b) and (c), Stats.;~~ and s.
7 50.065 (1) (ag) 1. a., (2) (d), (4), (5), (6) (b) and (c), Stats.;~~;~~ and s. 227.11 (2), Stats., to
8 protect from harm clients served by department-regulated programs, ~~children~~

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1 placed in foster homes licensed by county departments of social or human services
2 or private child-placing agencies or children who are being adopted, and children
3 served in day care programs contracted by local school boards under s. 120.13 (14),
4 Stats., by requiring uniform background information screening of persons regulated
5 and persons who are employees of or under contract to regulated entities or who are
6 nonclient residents of regulated entities.

7 **SECTION 2.** DHS 12.02 (1) (a) of the administrative code is amended to read:

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

17 **SECTION 3.** DHS 12.03 (1) of the administrative code is repealed.

18 **SECTION 4.** DHS 12.03 (2) of the administrative code is amended to read:

19 DHS 12.03 (2) "Agency" means the department, or a county department ~~or a~~
20 ~~school board or a child welfare agency licensed under s. 48.60, Stats., as a~~
21 ~~child-placing agency.~~

22 **SECTION 5.** DHS 12.03 (5) of the administrative code is repealed and recreated
23 to read:

24 DHS 12.03 (5) (a) "Caregiver" means any of the following:

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1 1. A person who is, or is expected to be, an employee or contractor of an entity,
2 who is or is expected to be under the control of an entity, as defined by the department
3 by rule, and who has, or is expected to have, regular, direct contact with clients of the
4 entity.

5 2. A person who has, or is seeking, a license, certification, registration, or
6 certificate of approval issued or granted by the department to operate an entity.

7 3. A person who is, or is expected to be, an employee of the board on aging and
8 long-term care and who has, or is expected to have, regular, direct contact with
9 clients.

10 (b) "Caregiver" does not include a person who is certified as an emergency
11 medical technician under s. 256.15, Stats., if the person is employed, or seeking
12 employment, as an emergency medical technician and does not include a person who
13 is certified as a first responder under s. 256.15, Stats., if the person is employed, or
14 seeking employment, as a first responder.

15 **SECTION 6.** DHS 12.03 (6) of the administrative code is amended to read:

16 DHS 12.03 (6) "Client" means a person who receives direct care or treatment
17 services from an entity. ~~For the purposes of this chapter, "client" includes an adopted~~
18 ~~child for whom an adoption assistance payment is being made under s. 48.975, Stats.~~

19 **SECTION 7.** DHS 12.03 (7) of the administrative code is amended to read:

20 DHS 12.03 (7) "Contractor" has the meaning specified in ~~ss. 48.685 (1) (ar) and~~
21 s. 50.065 (1) (bm), Stats.

22 **SECTION 8.** DHS 12.03 (10) of the administrative code is amended to read:

23 DHS 12.03 (10) "Direct contact" has the meaning specified in ~~ss. 48.685 (1) (ar)~~
24 ~~and s. 50.065 (1) (br)~~, Stats.

25 **SECTION 9.** DHS 12.03 (11) of the administrative code is amended to read:

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1 DHS 12.03 (11) "Entity" has the meaning specified in s. ~~48.685 (1) (b)~~ or 50.065
2 (1) (c), Stats., ~~whichever is applicable.~~

3 **SECTION 10.** DHS 12.03 (12) of the administrative code is repealed.

4 **SECTION 11.** DHS 12.03 (14) of the administrative code is amended to read:

5 DHS 12.03 (14) "Nonclient resident" has the meaning specified in ~~ss. 48.685~~
6 ~~(1) (b)~~ and s. 50.065 (1) (cn), Stats.

7 **SECTION 12.** DHS 12.03 (17) (intro.) and (b) of the administrative code are
8 consolidated, renumbered DHS 12.03 (17) and amended to read:

9 DHS 12.03 (17) "Regulatory approval" means: ~~(b)~~ For purposes of s. 50.065,
10 Stats., issuance by the department of an entity license, certification, certificate of
11 approval or registration, or approval by the department of the continuation of an
12 entity license, certification, certificate of approval or registration.

13 **SECTION 13.** DHS 12.03 (17) (a) of the administrative code is repealed.

14 **SECTION 14.** DHS 12.03 (18) of the administrative code is amended to read:

15 DHS 12.03 (18) "Rehabilitation review" refers to an agency or tribal process
16 where a person who is eligible under s. ~~48.685 (5) (a)~~ or 50.065 (5), Stats., may seek
17 the removal of a bar from regulatory approval, from employment as a caregiver at
18 or contracting with an entity, or from residency at an entity.

19 **SECTION 15.** DHS 12.03 (19) of the administrative code is repealed.

20 **SECTION 16.** DHS 12.03 (20) of the administrative code is amended to read:

21 DHS 12.03 (20) "Serious crime" has the meaning specified in s. ~~48.685 (1) (e)~~
22 ~~or 50.065 (1) (e), Stats., whichever is applicable.~~

23 **SECTION 17.** DHS 12.03 (22) of the administrative code is repealed.

24 **SECTION 18.** DHS 12.04 (1) of the administrative code is amended to read:

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

9 **SECTION 19.** DHS 12.05 (1) (a) and (b) of the administrative code are amended
10 to read:

11 DHS 12.05 (1) (a) Hires, employs, or contracts with a caregiver, or permits to
12 reside at an entity a nonclient resident, where the entity knows or should have
13 known the caregiver or nonclient resident is barred under s. ~~48.685 (4m) (b)~~ or 50.065
14 (4m) (b), Stats.

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

17 **SECTION 20.** DHS 12.05 (2) (d) of the administrative code is amended to read:

18 DHS 12.05 (2) (d) Specific conditions or limitations placed on the license,
19 certification, or registration ~~or on a school board-issued contract~~, including denial,
20 revocation, nonrenewal, or suspension of regulatory approval issued by the
21 department, ~~or denial, nonrenewal or termination by a school board of a contract~~
22 ~~with a day care provider under s. 120.13 (14)~~, Stats.

23 **SECTION 21.** DHS 12.05 (2) (e) of the administrative code is repealed.

24 **SECTION 22.** DHS 12.06 (intro.) of the administrative code is amended to read:

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

5 **SECTION 23.** DHS 12.07 (2) (intro.) of the administrative code is amended to
6 read:

7 DHS 12.07 (2) (intro.) When any of the following occurs relative to a signatory
8 or other legal party to the entity application for regulatory approval ~~or under which~~
9 ~~a contract under s. 120.13 (14), Stats., is signed,~~ or relative to a nonclient resident
10 at the entity, an entity shall, as soon as possible, but no later than the regulatory
11 agency's next business day, report the information to the agency that gave regulatory
12 approval, ~~or the school board with which the day care entity contracts under s. 120.13~~
13 ~~(14), Stats.;~~

14 **SECTION 24.** DHS 12.07 (3) of the administrative code is amended to read:

15 DHS 12.07 (3) When a person begins residing at or is expected to reside at an
16 entity, or the signatory for licensure changes, the entity shall, as soon as possible, but
17 no later than the regulatory agency's next business day, report the residency,
18 expected residency, or signatory change to the agency that gave regulatory approval
19 ~~or to the school board that the day care entity contracts with under s. 120.13 (14),~~
20 ~~Stats.,~~ and submit to the regulatory agency a completed background information
21 disclosure form for the new nonclient resident or new signatory.

22 **SECTION 25.** DHS 12.08 of the administrative code is amended to read:

23 **DHS 12.08 Armed forces background searches.** If a person who is the
24 subject of a background search under s. ~~48.685~~ or 50.065, Stats., served in a branch
25 of the U.S. armed forces, including any reserve component, within the last 3 years,

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1 the agency or entity shall make a good faith effort to obtain the discharge status of
2 that person, either from the discharge papers issued to the person or from the armed
3 forces branch in which the person served. If the discharge status is other than
4 honorable, the agency or entity shall obtain information on the nature and
5 circumstances of the discharge.

6 **SECTION 26.** DHS 12.09 of the administrative code is repealed.

7 **SECTION 27.** DHS 12.11 of the administrative code is amended to read:

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

11 **SECTION 28.** DHS 12.12 (1) (b) 1. and 2. of the administrative code are amended
12 to read:

13 DHS 12.12 (1) (b) 1. A tribal governing body may conduct rehabilitation
14 reviews under ~~ss. 48.685 (5) and s. 50.065 (5),~~ Stats., if a plan submitted under s.
15 ~~48.685 (5d) or 50.065 (5d),~~ Stats., has been approved by the department.

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

19 **SECTION 29.** DHS 12.12 (2) (a) (intro.) and 1. of the administrative code are
20 consolidated, renumbered DHS 12.12 (2) (a) and amended to read:

21 DHS 12.12 (2) (a) Any person who is ineligible under s. 50.065 (4m) (a) or (b),
22 ~~or 48.685 (4m) (a) or (b),~~ Stats., to receive regulatory approval, to be employed as a
23 caregiver, or to contract with or reside at an entity, may request a rehabilitation
24 review if the person meets both of the following conditions: 1. ~~The person has not~~
25 requested a rehabilitation review for a similar type of regulatory approval, job

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1 function or nonclient resident status within the preceding year. In this subdivision
2 paragraph, “similar” means comparable regulatory approval, or a comparable job
3 function or activity.

4 **SECTION 30.** DHS 12.12 (2) (a) 2. of the administrative code is repealed.

5 **SECTION 31.** DHS 12.12 (3) (a) and (b) of the administrative code are amended
6 to read:

7 DHS 12.12 (3) (a) Obtain a rehabilitation review request form developed by the
8 department or applicable tribe and submit the completed form to the agency that
9 regulates the entity, or to the applicable tribe, ~~or for day care programs established~~
10 ~~under s. 120.13 (14), Stats., to the school board.~~

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

14 **SECTION 32.** DHS 12.12 (4) (a) of the administrative code is amended to read:

15 DHS 12.12 (4) (a) *Rehabilitation review panel.* When an eligible person has
16 filed a complete rehabilitation review request form along with all required additional
17 and supporting information, the applicable agency, or tribe, ~~or school board~~ shall
18 appoint a review panel of at least 2 persons to review the information submitted. The
19 panel may request additional information from the person or from other agencies or
20 persons familiar with the person requesting the review.

21 **SECTION 33.** DHS 12.12 (5) (a) 3. of the administrative code is amended to read:

22 DHS 12.12 (5) (a) 3. If the review panel decides to deny approval of the
23 rehabilitation request, the decision shall explain the reasons for the denial and
24 inform the requester that he or she may appeal the decision as described in s. ~~48.685~~

