

## Statement of Scope

### Department of Children and Families

**Rule Number:** Chapters DCF 12, 202, 250, 251, and 252

**Relating to:** Child care licensing and certification updates related to the Child Care and Development Block Grant

**Rule Type:** Emergency and Permanent

This statement of scope was approved by the governor on 2/22/19.

#### **1. Finding/nature of emergency (for emergency rules only)**

An emergency rule is necessary to fully implement federal regulations required for funding from the Child Care Development Fund by the deadline of September 30, 2019.

#### **2. Detailed description of the objective of the proposed and emergency rules**

The proposed and emergency rules will update the department's child care licensing and certification rules related to the federal regulations issued to implement the Child Care Development Block Grant (CCDBG) Act of 2014, including the following:

##### Health and Safety Requirements under 45 CFR 98.21

The new CCDBG regulations specify health and safety topics that must be included in each state's statutes or rules applicable to child care providers. Many of the topics are already included in the department's licensing rules but are not included in the certification rule. The proposed rules will create new or additional requirements in the certification rule on the following topics:

- Handling and storage of hazardous materials and the appropriate disposal of bio-contaminants.
- Prevention and response to emergencies due to food and allergic reactions.
- Pediatric first aid and cardiopulmonary resuscitation.
- Emergency preparedness and response planning for emergencies resulting from a natural disaster or a human-caused event such as violence in a child care facility. The regulation lists specific topics that must be included in the emergency preparedness requirements.
- Appropriate precautions in transporting children.
- Building and physical premises safety, including identification of and protection from hazards, bodies of water, and vehicular traffic.

The proposed rules will also clarify language in the certification rule on the administration of medication. The licensing rules will be amended to add required detail to the current emergency preparedness requirements, clarify existing language on food allergies, and clarify and modify provisions on transporting children.

##### Background Check Requirements under 45 CFR 98.43 and Section 48.686, Stats., as created by 2017 Wisconsin Act 59

The CCDBG requires the state agency to conduct the background checks and determine eligibility of an individual to hold a license or certification, reside in, or work in a child care program. Since the previous state background check statute for child care and child welfare providers at s. 48.685, Stats., provided that licensees conduct the background checks of employees, a new state background check statute for child

care providers was created at s. 48.686, Stats. Section 48.685, Stats., will continue to apply to child welfare providers.

The proposed rules will modify provisions related to the new requirements under s. 48.686, Stats., in the child care certification and licensing rules. In addition, the department's background check rule in ch. DCF 12 will be amended to create a new required appeal provision for child care providers and to make other related revisions.

Training under 45 CFR 98.44 and Section 48.651 (1d), Stats., as affected by 2017 Wisconsin Act 59  
The proposed rules will create new training and continuing education requirements in the certification rule based on 45 CFR 98.44 and s. 48.651 (1d), Stats., as affected by 2017 Wisconsin Act 59. The proposed rules will establish a requirement that certified providers complete 5 hours of continuing education per year. The licensing rules will be amended to add topics required under 45 CFR 98.44 that are not included in the current licensing rules.

#### Administration, Monitoring, and Enforcement

Each state is required to ensure that child care providers comply with applicable health and safety requirements. The department's contracts with certification agencies have been revised to include the responsibility for annual unannounced monitoring visits of certified operators. The certification rule will be amended to incorporate this change and to clarify administrative and enforcement responsibilities of certification agencies.

The proposed rules will also clarify the monitoring of programs operated by school districts under ch. DCF 252, Subchapter II.

#### School-Age Certification Repealed

Certification for school-age programs under s. DCF 202.09 will be repealed. There are currently only 4 certified school-age programs statewide.

#### Incorporate State Statutory Requirements

The proposed rules will also amend the certification and licensing rules where necessary to include the state statutory requirements for vehicle liability insurance under s. 344.62, Stats., and carbon monoxide detectors under s. 101.149, Stats.

#### Streamlining

The proposed rules may also include changes proposed in SS 097-15 to reorganize the rules and improve clarity for child care providers.

### **3. Detailed explanation of statutory authority for the rule**

Section 48.67 (intro.), Stats., provides that the department shall promulgate rules establishing minimum requirements for the issuance of licenses to, and establishing standards for the operation of, child welfare agencies, child care centers, foster homes, group homes, shelter care facilities, and county departments. Those rules shall be designed to protect and promote the health, safety, and welfare of the children in the care of all licensees.

Section 48.651 (1d), Stats., as affected by 2017 Wisconsin Act 59, provides that the department shall promulgate rules establishing standards for the certification of child care providers. The rules shall include a requirement that a Level I certified child care provider successfully complete department-approved preservice health and safety training by no later than the date of certification. A Level II certified child care provider shall successfully complete the required training by no later than the end of the orientation period available under 42 USC 9858c (c) (2) (I) (i) (XI).

Employees and volunteers of a Level I or Level II certified child care provider must also complete the required training by the end of the orientation period. Section 48.651 (1d) (b) 1. a. to j., Stats., specifies 10 topics that must be included in the required preservice or orientation training. Subdivision 2. provides that a child care provider or employee or volunteer of a child care provider shall also complete ongoing in-service training on an annual basis, including training on the topics listed in subd. 1. a. to j.

Section 48.685 (9), Stats., provides that the department may promulgate any rules necessary for the administration of the section.

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States are required to comply with 45 CFR Part 98 as a condition of receiving Child Care Development Funds.

Section 227.11 (2) (a) (intro.), Stats., expressly confers rule-making authority on each agency to promulgate rules interpreting the provisions of any statute enforced or administered by the agency.

**4. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule**

300 hours

**5. List with description of all entities that may be affected by the proposed rule**

Certified family child care operators and applicants, certified school-age care programs, certification agencies, family child care licensees, group child care licensees, day camps for children program licensees and license-exempt programs operated by public schools.

**6. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule :**

45 CFR 98.41 Health and safety requirements

Each state shall have statutes or rules applicable to child care providers that include requirements designed to protect the health and safety of children on, at a minimum, all of the following topics:

- The prevention and control of infectious diseases, including immunizations.
- The prevention of sudden infant death syndrome and the use of safe sleeping practices.
- Administration of medication, consistent with standards for parental consent.
- Prevention and response to emergencies due to food and allergic reactions.
- Building and physical premises safety, including the identification of and protection from hazards, bodies of waters, and vehicular traffic.
- Prevention of shaken baby syndrome, abusive head trauma, and child maltreatment.
- Emergency preparedness and response planning for emergencies resulting from a natural disaster or a human-caused event within the meaning of those terms under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. The following topics shall be included:

- Procedures for evacuation, relocation, shelter-in-place, and lock down.
  - Staff and volunteer emergency preparedness training and practice drills.
  - Communication and reunification with families.
  - Continuity of operations.
  - Accommodation of infants and toddlers, children with disabilities, and children with chronic medical conditions.
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- Handling and storage of hazardous materials and the appropriate disposal of biocontaminants.
  - Appropriate precautions in transporting children, if applicable.
  - Pediatric first aid and cardiopulmonary resuscitation.
  - Recognition and reporting of child abuse and neglect.

#### 45 CFR 98.42 Enforcement of licensing and health and safety requirements

Each state shall have monitoring policies and practices to ensure that child care providers comply with applicable health and safety requirements. Compliance monitoring for licensed child care must include at least one inspection before a license is issued and an unannounced inspection at least annually. Compliance monitoring for license-exempt child care must include an annual inspection.

#### 45 CFR 98.43 Criminal background checks

Each state is required to have in effect requirements, policies, and procedures to require and conduct criminal background checks for employees of child care facilities including prospective staff members and any individual residing in a family child care program who is age 18 and above.

#### 45 CFR 98.44 Training and professional development

##### Framework

Each state must establish a framework for training, professional development, and postsecondary education for child care providers, teachers, and directors that is developed in consultation with the state advisory council and addresses professional standards and competencies, career pathways, and workforce information and financing. A state's framework for training, professional development, and postsecondary education for child care providers, teachers, and directors shall also do all of the following:

- Establish qualifications for providers in different child care settings.
- Reflect current research and best practices, including culturally and linguistically appropriate practices.
- Improve the quality, diversity, stability, and retention of providers, teachers, and directors.

##### Preservice or Orientation Training

Each state shall require child care providers, teachers, and directors to complete a pre-service or orientation training within their first 3 months in the position. The training shall include all of the following topics:

- The health and safety topics in 45 CFR 98.41.
- Child development, including the major domains (cognitive, social, emotional, and physical and approaches to learning).

##### Ongoing professional development

Each state shall establish the number of hours of ongoing professional development that child care providers, teachers, and directors must complete annually. The required training shall be aligned to a

progression of professional development and shall update health and safety standards, incorporate knowledge and application of the state's early learning and developmental guidelines for children from birth to kindergarten, and incorporate social-emotional behavior intervention models.

**7. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):**

The rule will have a minimal impact on child care providers.

**8. Contact Person:**

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