

— HFS 12 - BACKGROUNDS AND CHECKS —
98-191 (CASE NUMBER)

WISCONSIN LEGISLATIVE COUNCIL STAFF

LCRC
FORM 2

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
Assistant Director
(608) 266-2982



David J. Stute, Director
Legislative Council Staff
(608) 266-1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 98-191

AN ORDER to create chapter HFS 12, relating to uniform procedures for checking the backgrounds of persons who apply to provide or are providing care or treatment to people who need that care or treatment, and for barring persons because of specified convictions, charges or findings substantially related to the care of clients from operating a service provider organization, providing care or treatment to the clients of a service provider or otherwise having contact with the clients of a service provider.

Submitted by **DEPARTMENT OF HEALTH AND FAMILY SERVICES**

11-25-98 RECEIVED BY LEGISLATIVE COUNCIL.

12-23-98 REPORT SENT TO AGENCY.

RNS:LR:kjf;wu

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

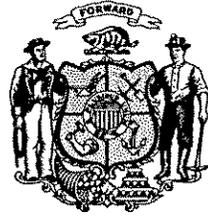
Comment Attached YES NO

WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
Assistant Director
(608) 266-2982



David J. Stute, Director
Legislative Council Staff
(608) 266-1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE RULE 98-191

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

- a. The section and paragraph titles in the rule should be modified to conform with s. 1.05 (2), Manual.
- b. Section HFS 12.03 (13) (a) should be broken down into subdivisions for greater clarity and readability. This comment applies also to s. HFS 12.03 (19) (a).
- c. In s. HFS 12.20 (2) (b) 3., in the third line, "adoptive parent applicants studied," should be replaced by "in a home studied for adoptive parent applicant approval" to make this subdivision consistent with other subdivisions in that paragraph.

4. Adequacy of References to Related Statutes, Rules and Forms

- a. Since the rule refers to a rehabilitation review request and a background information disclosure form, the department should consider including a note in the beginning of the chapter that is similar to the note following s. HFS 12.20 (1) (a) 3. The note could specifically refer to "<http://www.dhfs.state.wi.us/caregiver/forms/index.htm>".
- b. In s. HFS 12.03 (10), should s. 46.21, Stats., the statutory citation for the Milwaukee County Department of Human Services, be included in the definition of "county department"?
- c. In s. HFS 12.10 (2) (a), day care programs licensed under s. 48.65, Stats., are mentioned. However, several provisions in s. 48.685, Stats., refer also to day care programs

certified under s. 48.651, Stats. This citation is omitted in this paragraph, as it is in several other provisions throughout the rule that cite day care programs licensed under s. 48.65, Stats., but do not mention programs certified under s. 48.651, Stats. These provisions should be reviewed to determine whether a reference to s. 48.651, Stats., should also be included.

d. In s. HFS 12.11 (1) (b), should special rules regarding permanent bar crimes for foster homes and treatment foster homes be referenced? [See s. 48.685 (5) (bm), Stats.]

e. In Appendix A, the program sanction of permanent foster care bar should apply for the following crimes: ss. 940.305, 940.31, 943.23 (1g), (1m) and (1r); and 943.32 (2), Stats.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. Section HFS 12.03 (2) should read: “. . . a child welfare agency licensed under s. 48.60, Stats., as a child-placing agency.”

b. In s. HFS 12.03 (3), “background information form” should be renamed “background information disclosure form,” since that is the official name of the form. In addition, in this subsection, “criminal” should be inserted between “person’s” and “background.”

c. In s. HFS 12.03 (19) (a), the word “or” should be inserted after the word “license” in the first line.

d. Does s. HFS 12.03 (19) (b) include licensure of individual emergency medical technicians or certification of individual first responders-defibrillation?

e. In s. HFS 12.03 (22), the word “officer” should be “office.”

f. In s. HFS 12.11 (1) (c), “identified in appendix A as a permanent bar crime” should be inserted after the word “crime” in the third line. A similar change is needed in s. HFS 12.11 (1) (c) 2.

g. In the note to s. HFS 12.11 (3) (b) 3. g., is it an “appeal” that is filed under s. 111.335, Stats., or a “complaint”?

h. In s. HFS 12.11 (5) (a) 1., should “shall” in the third line be replaced by “may”?

i. In s. HFS 12.12 (1) (c) 5., subd. 5. a. and b. can be merged.

j. In s. HFS 12.12 (3) (a), “conditions” should replace “a condition.”

k. Divide s. HFS 12.20 (1) (b) 2. The comma after the word “have” in the third line should be deleted.

l. In s. HFS 12.20 (2) (a) 1., a comma should be inserted after the word “entity.” Also, the word “and” before sub. (2) in the last line should be replaced by a comma and the word “and” before sub. (3) should be deleted.

m. In s. HFS 12.20 (2) (a) 2. a., a comma should be inserted after the word “If” on the first line. The word “or” should be inserted after the word “apply” in the third line. Further, the

comma after “subd. 2. d.” should be deleted. Finally, the current sentence is too long and the reader easily loses track of what is happening in this subdivision paragraph.

n. In s. HFS 12.20 (2) (a) 2. c., “of” should replace “on” in the first line. Further, “this” should be deleted in the first line.

o. In s. HFS 12.20 (2) (b) 3., the comma after “sub. (1) (b) 2.” should be deleted.

p. In s. HFS 12.20 (2) (b) 4., the word “established” should be replaced by “contracted with,” as persons cannot be “established” by a school board. Further, “or” should replace the comma before “prospective.”

PROPOSED ORDER OF THE
DEPARTMENT OF HEALTH AND FAMILY SERVICES
CREATING RULES

To create chapter HFS 12, relating to uniform procedures for checking the backgrounds of persons who apply to provide or are providing care or treatment to people who need that care or treatment, and for barring persons because of specified convictions, charges or findings substantially related to the care of clients from operating a service provider organization, providing care or treatment to the clients of a service provider or otherwise having contact with the clients of a service provider.

Analysis Prepared by the Department of Health and Family Services

Sections 48.685 and 50.065, Stats., as created by 1997 Wisconsin Act 27 and amended by 1997 Wisconsin Act 237, apply to the Department in its functions of licensing, certifying, registering or approving some persons to provide care or treatment to other persons; to county social service and human service departments that license foster homes and treatment foster homes for children and carry out requested adoption home studies; to private child-placing agencies licensed to do the same; and to school boards that contract for day care programs under s. 120.13 (14), Stats. Sections 48.685 and 50.065, Stats., apply also to the regulated entities, that is, to the entities that are licensed, registered, certified or approved, as they hire persons to be employees, enter into contracts with persons to provide services to clients or permit nonclients to reside at the facilities.

The new statutes prohibit a regulatory agency from licensing, certifying, registering or approving a person to be a service provider or to reside as a nonclient at an entity if the agency knows or should know that the person has been convicted of, or has a pending charge for, a serious crime; is found to have abused or neglected a client or child or to have misappropriated a client's property; or is required to be credentialed by the Department of Regulation and Licensing (DRL) but is not credentialed or the credential is not current or is so limited as to prevent the provision of adequate client care. Similarly, regulated entities planning to hire or contract with a person expected to have access to clients may not hire or contract with the person if the entity knows or should know of the existence of a prohibited criminal conviction or charge, or a finding, or the absence or inadequacy of a required credential.

An agency or entity is expected to know of a person's prohibited criminal conviction or charge or a finding or the absence or inadequacy of a required credential by (1) having the person complete a Department-developed background information disclosure form, and (2) conducting a search for information about any prohibited conviction, charge or finding against the person or any credential inadequacy.

The new statutes direct the Department to develop a background information form, and the Department and the other regulatory agencies to require, beginning October 1, 1998, that all persons applying for a license, certification, registration or

approval, or for approval to reside as nonclients at an entity complete that form and return it to the agency and, by October 1, 1999, that all persons who were licensed, certified, registered or approved or given permission to reside at an entity as nonclients prior to October 1, 1998, are to have completed and returned that form to the agency. Beginning October 1, 1998, all regulated entities are to have applicants for employment who will be in contact with clients complete and return the same form as well as all persons who propose to enter into a contract with an entity to provide services to the entity's clients. By October 1, 1999, this is to be done by all persons who were hired by or under contract to the entity before October 1, 1998.

The Department is expected to have any person who applies for continuation of a license, certification, approval or registration to update the background information form at that time, and an entity is to require this every 4 years for a person employed by or under contract to the entity who has access to clients and any nonclient who lives at the entity.

The new statutes direct a regulatory agency, on receipt of an application for regulatory approval or for approval of a nonclient to reside at an entity, to also undertake a search for any of the following information relating to the applicant's background: any criminal history information, from records maintained by the Department of Justice; any substantiated allegations of abuse or neglect of a client or misappropriation of a client's property, from the Department's caregiver misconduct registry under ch. HFS 13; any information maintained by the Department about substantiated reports of child abuse or neglect against the person; any information maintained by the Department of Regulation and Licensing regarding the status of the person's required credentials; and any information maintained by the Department about a previous denial to the applicant of regulatory approval, residence at an entity, employment by an entity or a contract with an entity. Entities are to undertake the same search for background information about applicants for employment and persons who propose to provide services under contract to the entity's clients.

At least every 4 years the Department is to undertake repeat searches, in the same manner as before, for background information on persons holding regulatory approvals from the Department and on persons who are nonclient residents of entities, and at least every 4 years an entity is to undertake repeat searches, in the same manner as before, for background information on persons employed by or under contract to the entity and having access to clients.

For some serious crimes that would otherwise bar a person from regulatory approval or from being employed by or under contact with or residing at an entity, the new statutes permit a person convicted of a crime, provided certain conditions are met, to ask an agency for rehabilitation review, that is, for an opportunity to demonstrate that he or she is rehabilitated and so the bar can be lifted.

These are the Department's rules for administration of ss. 48.685 and 50.065, Stats., as created by Act 27 and amended by 1997 Wisconsin Act 237. The rules

repeat the statutory requirements and add more detail for administering them, add procedures for handling rehabilitation review requests, add definitions for "serious crime" and "under the entity's control" and other pertinent definitions and add a crimes list as Appendix A which includes 158 crimes, 25 of which are permanent bar crimes for all programs, that is, a conviction for the crime or commission of the offense means that the individual is permanently barred from receiving approval to operate an entity or to be hired by or have a contract with or reside at an entity.

The new background check statutes and rules were effective beginning October 1, 1998 for entities initially approved on or after that date, persons that entities hire or contract with on or after that date and nonclients who began to reside at an entity on or after that date. The statutes and rules apply beginning October 1, 1999 to operating entities that were initially approved prior to October 1, 1998, persons employed by entities or under contract with entities who were initially hired or contracted with prior to October 1, 1998 and nonclients living at an entity who began living there prior to October 1, 1998.

The Department's authority to create these rules is found in ss. 48.685 (4), (5), (6) (b) and (c) and (7) (a) and (b) and 50.065 (1) (d) and (f), (4), (5), (6) (b) and (c) and (7) (a) and (b), Stats., as created by 1997 Wisconsin Act 27 and amended by Wisconsin Act 237, and s. 227.11 (2), Stats. The rules interpret ss. 48.685 and 50.065, Stats., as created by 1997 Wisconsin Act 27 and amended by 1997 Wisconsin Act 237, and s. 120.13 (14), Stats., as amended by 1997 Wisconsin Act 27.

SECTION 1. Chapter HFS 12 is created to read:

Chapter HFS 12

CAREGIVER BACKGROUND CHECKS

Subchapter I - General Provisions

HFS 12.01 Authority and Purpose

HFS 12.02 Applicability

HFS 12.03 Definitions

HFS 12.04 Sanctions

Subchapter II - Personal Care Services Qualifications Assessment

HFS 12.10 Background-Related Barriers to Regulatory Approval and Client Access

HFS 12.11 Effect of Criminal and Abuse History on Regulatory Approval and Client Access

HFS 12.12 Rehabilitation Review

Subchapter III - Background Information Collection

HFS 12.20 Background Information Gathering and Screening

HFS 12.21 Search for Criminal and Background History Information

SUBCHAPTER 1 - GENERAL PROVISIONS

HFS 12.01 AUTHORITY AND PURPOSE. This chapter is promulgated under the authority of ss. 48.685 (4), (5) (6) (b) and (c) and (7) (a) and (b), 50.065 (1) (d) and (f), (4), (5), (6) (b) and (c) and (7) (a) and (b) and 227.11 (2), Stats., to protect from harm clients served by department-regulated programs, children placed in foster homes licensed by county departments of social or human services or private child-placing agencies or children who are being adopted and children served in day care programs contracted by local school boards under s. 120.13 (14), Stats., by requiring uniform background information screening of persons regulated and persons who are employees of or under contract to regulated entities or who are nonclient residents of regulated entities.

HFS 12.02 APPLICABILITY. (1) SCOPE. (a) Persons, facilities, agencies and organizations affected. This chapter applies to the department; to applicants for regulatory approval from the department; to all persons, facilities, agencies and organizations that have received regulatory approval from the department; to county department and child-placing agencies that license foster homes and approve applications for adoption home studies; to foster home license applicants and licensees and applicants for an adoption home study; to school boards that establish or contract

for day care programs under s. 120.13 (14), Stats., and to applicants and persons under contract to a school board to operate a day care program under s. 120.13 (14), Stats.

(b) Entities covered. The entities subject to this chapter are those regulated under: chs. HSS or HFS 34, 38, 40, 45, 46, 52, 54, 55, 56, 57, 59, 61, 63, 83, 89, 110, 111, 112, 124, 127, 131, 132, 133 and 134, Wis. Adm. Code, and any other direct client care or treatment program that may be licensed or certified or registered by the department, including facilities under chs. HSS 82 and 88, Wis. Adm. Code.

(2) **IMPLEMENTATION.** (a) Agencies and new entities. This chapter applies beginning October 1, 1998, to all agencies and to all prospective entities and all prospective employees of an entity, persons wishing to contract with an entity and prospective nonclient residents of an entity who will have access to clients and be under the entity's control.

(b) Existing entities. This chapter applies beginning October 1, 1999, to all entities that received initial regulatory approval prior to October 1, 1998, all employees of those entities or persons under contract with those entities prior to and since October 1, 1998, and to all nonclients living at an entity having access to entity clients prior to and since October 1, 1998.

HFS 12.03 DEFINITIONS. In this chapter:

(1) "Adoption home study" means an evaluation of a prospective adoptive family under ch. HSS 51 or 54.

(2) "Agency" means the department, a county department, a child-placing agency licensed under s. 48.60, Stats., as a child-placing agency or a school board. *welfare 5*

(3) "Background information form" means the department's form, DHFS 64, on which a person provides certain information concerning the person's background. *background 5*

(4) "Bar" means, as a noun, that a person is not permitted to receive regulatory approval or to be employed by or under contract with an entity or to reside as a nonclient at an entity. *600.02*

(5) "Caregiver" means a person who is employed by or under contract with an entity and who has access to the entity's clients and who is under the entity's control. *5*

(6) "Certificate of approval" means a certificate of approval issued under s. 50.35, Stats.

(7) "Child-placing agency" means a child welfare agency licensed under s. 48.60, Stats., as a private child-placing agency.

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

(9) "Contracted services" means services contracted by an entity as part of the entity's service program.

(10) "County department" means a county department of social services established under ss. 46.215 or 46.22, Stats., or a county department of human services established under s. 46.23, Stats.

(11) "Crimes list" means the list in appendix A.

(12) "Department" means the Wisconsin department of health and family services.

(13) "Entity" means:

(a) For purposes of s. 48.685, Stats., a child welfare agency licensed as a child-placing agency under s. 48.60, Stats., and ch. HSS 54 to provide care and maintenance for children, to place children for adoption or to license foster homes or treatment foster homes, or a child caring institution licensed under ch. HSS 52 to provide residential care and treatment; a group home licensed under s. 48.625, Stats.; a shelter care facility licensed under s. 938.22, Stats.; a day care center licensed under s. 48.65, Stats., or established or contracted for under s. 120.13 (14), Stats., or a foster home or treatment foster home licensed under s. 48.62 or 48.75, Stats.; including a home licensed for placement of children for adoption under s. 48.833, Stats., for whom adoption assistance will be provided under s. 48.975, Stats.

(b) For purposes of s. 50.065, Stats., a facility, organization or service licensed or certified by or registered with the department to provide direct care or treatment services to clients, including a hospital, a personal care worker agency or a supportive home care service agency, but not including a person certified as a medical assistance provider as defined in s. 49.43 (10), Stats., who is not otherwise approved under s. 50.065 (1) (cm), Stats., or licensed or certified by or registered with the department, or a public health dispensary established under s. 252.10, Stats.

(14) "Foster home" means a home licensed under s. 48.62 or 48.75, Stats., in which care and maintenance are provided for no more than 4 children placed in the home, unless all are siblings, and includes a treatment foster home that also provides structured professional treatment by trained individuals, and a home licensed for placement of children for adoption under s. 48.833, Stats., for whom adoption assistance will be provided under s. 49.975, Stats.

(15) "Hospital" means a facility approved as a hospital under s. 50.35, Stats.

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

(17) "Permanent bar crime" means a serious crime for which conviction results in the individual being permanently ineligible to receive regulatory approval from an agency, to be hired by or have a contract with an entity to provide services to clients or to reside at an entity.

Note: Permanent bar crimes are identified in the crimes list in appendix A.

(18) "Personal care worker agency" means a home health agency licensed under s. 50.49, Stats., and ch. HSS 133 and certified as a personal care worker agency under s. HFS 105.17 (1).

(19) "Regulatory approval" means:

(a) For purposes of s. 48.685, Stats., issuance by the department of a license certification or the continuation or renewal of a license or certification, or approval of a prospective adoptive parent application for a home study; issuance or renewal by a county department or child-placing agency of a foster home or treatment foster home license under s. 48.62 or 48.75, Stats., including homes licensed for placement of children for adoption under s. 48.833, Stats., for whom adoption assistance will be provided under s. 48.975, Stats., and includes pre-adoptive applicants who contract for a home study with a licensed private child placing agency for approval of a placement of a child for adoption; or approval by a school board under s. 120.13 (14), Stats., of day care services established or contracted with a day care provider to provide day care services.

(b) For purposes of s. 50.065, Stats., issuance by the department of a license, certification, a certificate of approval or registration, or approval by the department of the continuation of a license, certification, certificate of approval or registration.

(20) "Rehabilitation review" means review by an agency of a request from a person who is eligible under s. HFS 12.12 (1) to seek removal of a bar to regulatory approval, employment, contracting or residency with an entity.

(21) "Serious crime" means a crime identified under s. HFS 12.11 (1) (b) or (c).

(22) "State agency" means any officer, commission, board, department or bureau of state government.

(23) "Supportive home care service agency" means a home health agency licensed under s. 50.49, Stats., and ch. HSS 133.

(24) "Under the entity's control" means that an entity, other than as provided under s. HFS 12.21 (1) (b) 2., may choose and affect whether a person who is

employed by or under contract with the entity or who is a nonclient resident of the entity may have contact with clients the entity serves.

HFS 12.04 SANCTIONS. An entity that hires, employs or permits to reside as a nonclient at the entity a person who has access to clients and who the entity knew or should have known is barred under this chapter or an entity that violates background information form requirements in s. HFS 12.20 (2) (a) 2. a. to c. or who violates any provision of background information gathering under s. HFS 12.21, may be required to forfeit not more than \$1,000 and may be subject to any of the following additional sanctions:

(1) A requirement that the entity submit to the agency a written corrective action plan specifying corrections that will be made to identified personnel screening practices and implement that plan.

(2) A corrective action plan imposed by the agency that specifies corrections that need to be made in personnel screening practices.

(3) At entity expense, attendance at agency-designated personnel screening training or other appropriate training.

(4) Specific conditions or limitations placed on the license, certification or registration or on the school board-issued contract.

(5) For a person licensed to operate a child welfare agency, shelter care facility, group foster home or day care facility, any sanction or penalty described under s. 48.715, Stats.

(6) Utilization by the entity, at entity expense, of a temporary employment agency for screening and hiring personnel.

(7) Denial, revocation or suspension of a license, certification, registration or other approval issued by the department, a county department or a child-placing agency.

(8) Denial, nonrenewal or termination by a school board of a contract with a day care provider under s. 120.13 (14), Stats.

SUBCHAPTER II - PERSONAL CARE SERVICES QUALIFICATIONS ASSESSMENT

HFS 12.10 BACKGROUND-RELATED BARRIERS TO REGULATORY APPROVAL AND CLIENT ACCESS. (1) **AGENCY AND ENTITY PROHIBITIONS.** (a) Agency responsibilities. Except as provided in sub. (1m) and notwithstanding s. 111.335, Stats., the department may not give regulatory approval to a person to operate an entity, approve a nonclient to live at an entity or approve an adoptive home on the basis of an adoption home study; a county department or a child-placing agency may

not license or renew the license of a foster home or approve an adoption home on the basis of an adoption home study; and a school board may not contract with a person under s. 120.13 (14), Stats., to provide a day care program if the agency knows or should have known any information about the operator or other person as described under sub. (2).

(b) Entity responsibilities. Except as provided in sub. (1m) and notwithstanding s. 111.335, Stats., an entity may not hire, employ or contract with a person who will be under the entity's control and who is expected to have access to its clients, or permit to reside at the entity a person who is not a client but who is expected to have access to its clients, if the entity knows or should have known any information about the person as described under sub. (2).

(1m) LIFTING OF BAR. An agency may give regulatory approval to the operator of an entity otherwise barred under sub. (1) (a) and an entity may employ or contract with a person or may allow a person to reside at the entity who is otherwise barred under sub. (1) (b), if that person is eligible under s. HFS 12.12 (1) for rehabilitation review and makes a sufficient showing of rehabilitation as evidenced by a rehabilitation approval received from an agency under s. HFS 12.12.

(2) REASONS FOR BARRING A PERSON. An agency shall comply with sub. (1) (a) and an entity shall comply with sub. (1) (b) for any person whose background records indicate any of the following:

(a) The person has been convicted of a serious crime or of a comparable act or offense or, if for a day care program licensed under s. 48.65, Stats., or established under s. 120.13 (14), Stats., was adjudicated delinquent for a serious crime or for a comparable act or offense on or after his or her 12th birthday.

(b) The person has pending against him or her a charge for a serious crime or a comparable act or offense.

(c) A unit of government or a state agency has made a finding that the person has abused or neglected a client or misappropriated the property of a client.

Note: Any person who is listed in the Department's caregiver misconduct registry under ch. HFS 13 as having a substantiated finding of abuse or neglect of a client or misappropriation of a client's property is permanently prohibited from being employed in a federally-certified nursing home or a federally-certified intermediate care facility for the mentally retarded (ICF/MR). See 42 CFR 483.13 and 483.400.

(d) A determination has been made under s. 48.981 (3) (c) 4., Stats., or under the laws of any other jurisdiction that the person has abused or neglected a child.

(e) In the case of a position for which the person must be credentialed by the department of regulation and licensing, the person's credential involves direct client

care or treatment services and is not current or is limited so as to restrict the person from providing adequate care to a client.

HFS 12.11 EFFECT OF CRIMINAL AND ABUSE HISTORY ON REGULATORY APPROVAL AND CLIENT ACCESS. (1) **SERIOUS CRIMES.** (a) Agency or entity determination.

An agency or an entity in deciding on a bar on regulatory approval or on a bar on employment, contracting or residency at an entity, shall consider the act or offense under which a person was convicted of a crime and determine whether that act or offense is comparable in nature to an act or offense specified in this section or as otherwise found in appendix A which would bar a person, even though the crime under which the person was convicted is a lesser crime. Crimes under this section also include similar crimes committed in jurisdictions outside of Wisconsin.

(b) Certain statute-specified serious crimes. As provided in ss. 48.685 (5) (b) and 50.065 (5), Stats., no person may be granted regulatory approval to operate an entity or may be permitted to be employed, contracted with or reside at an entity if that person has been convicted of any of the following crimes or acts or, if for a day care program licensed under s. 48.65, Stats., or established under s. 120.13 (14), Stats., the person was adjudicated delinquent on or after his or her 12th birthday for any of the following crimes or acts:

1. First degree intentional homicide under s. 940.01, Stats.
2. First degree sexual assault under s. 940.225 (1), Stats.
3. First degree sexual assault of a child under s. 948.02 (1), Stats.
4. Second degree sexual assault of a child under s. 948.02 (2), Stats., if the person was, at the time of the sexual contact or sexual intercourse, more than 4 years older than the child with whom the person had the sexual contact or sexual intercourse.
5. Repeated acts of sexual assault of the same child under s. 948.025, Stats., if the child had not attained the age of 13, or if the child had attained the age of 13 and had not attained the age of 16 and the person was, at the time of the sexual contact or sexual intercourse, more than 4 years older than the child with whom the person had the sexual contact or sexual intercourse.

(c) Other serious crimes. 1. No person may be granted regulatory approval to operate an entity or may be permitted to be employed by, contracted with or reside at an entity if that person was convicted of a crime or, if for a day care program licensed under s. 48.65, Stats., or established under s. 120.13 (14), Stats., the person was adjudicated delinquent on or after his or her 12th birthday for a crime identified in Appendix A as a permanent bar crime.

2. Except as provided under sub. (2), no person may be granted regulatory approval to operate an entity or may be permitted to be employed by, contracted with or

reside at an entity if that person was convicted of a crime or, if for a day care program licensed under s. 48.65, Stats., or established under s. 120.13 (14), Stats., the person was adjudicated delinquent on or after his or her 12th birthday for a crime identified in Appendix A as a bar with rehabilitation crime.

(2) **SERIOUS CRIMES AND DEMONSTRATION OF REHABILITATION.** (a) Rehabilitation review and agency regulatory approval. The department may give regulatory approval to operate an entity or give approval for an adoption home study, a county department or a child-placing agency may license a foster home or give approval for an adoption home study and a school board may contract under s. 120.13 (14), Stats., with a person who otherwise may not receive regulatory approval for a reason set out in s. HFS 12.10 (2), if the person has not committed a crime specified under sub. (1) (b) or (c) 1. and can demonstrate to the appropriate agency by clear and convincing evidence and in accordance with procedures established under s. HFS 12.12, that he or she has been rehabilitated and is eligible for regulatory approval.

(b) Rehabilitation review and entity action. An entity may employ or contract with a person or permit a nonclient to reside at the entity who otherwise may not be employed, contracted with or permitted to reside at the entity for a reason set out in s. HFS 12.10 (2) if the person has not committed a crime specified under sub. (1) (b) or (c) 1. and can demonstrate to the appropriate agency by clear and convincing evidence and in accordance with procedures established under s. HFS 12.12 that he or she has been rehabilitated and is eligible to be employed by or contracted with or to reside at the entity.

(3) **OTHER CRIMES, ACTS OR OFFENSES SUBSTANTIALLY RELATED TO THE CARE OF A CLIENT.** (a) Refusals. 1. Notwithstanding s. 111.335, Stats., the department may refuse to give regulatory approval to a person, a county department or a child-placing agency may refuse to license a foster home or refuse to approve an adoption home study, a school board may refuse to contract with a person under s. 120.13 (14), Stats., and an entity may refuse to employ, contract with or permit to reside at an entity a person specified under s. HFS 12.10 (1) (a) or (b), when the agency or entity determines the person has been convicted for a crime or, if for a day care program licensed under s. 48.65, Stats., or established under s. 120.13 (14), Stats., the person was adjudicated delinquent on or after his or her 12th birthday for a crime not otherwise identified under sub. (1) or (2) which is substantially related to the care of a client.

2. Notwithstanding s. 111.335, Stats., the department may refuse to license a person to operate a day care center or a school board may refuse to contract with a person under s. 120.13 (14), Stats., a day care center that is licensed under s. 48.65, Stats., or established or contracted for under s. 120.13 (14), Stats., may refuse to employ, contract with or permit to reside at the day care center at any time the department, a school board or a day care provider determines the person has been convicted or, if for a day care program licensed under s. 48.65, Stats., or established under s. 120.13 (14), Stats., the person was adjudicated delinquent on or after his or

her 12th birthday for a crime, act or offense otherwise not identified under sub. (1) or (2) which is substantially related to the care of a client.

(b) Substantially related criteria. In determining whether a crime or delinquency adjudication under par. (a) is substantially related to the care of a client, the agency or entity shall consider at minimum all of the following:

1. In relation to the job:
 - a. The nature and scope of the job's client contact.
 - b. The nature and scope of the job's discretionary authority and degree of independence in judgment relating to decisions or actions which affect the care of clients.
 - c. The opportunity the job presents for the commission of similar offenses.
 - d. The extent to which acceptable job performance requires the trust and confidence of clients and their parent or guardian.
 - e. The amount and type of supervision received in the job.
2. In relation to the offense:
 - a. Whether intent is an element of the offense.
 - b. Whether the elements or circumstances of the offense are substantially related to the job duties.
 - c. The pattern of offenses.
 - d. The extent to which the offense relates to vulnerable clients.
 - f. Whether the crime involves violence or threat or harm.
 - g. Whether the crime is of a sexual nature.
3. In relation to the individual:
 - a. The number and type of offenses for which the individual has been convicted.
 - b. The length of time between the conviction and the employment decision.
 - c. The individual's employment history, including references, if available.

d. The individual's participation in or completion of pertinent programs of a rehabilitative nature.

e. The individual's probation or parole status.

f. The individual's ability to perform or to continue to perform the job consistent with the safe and efficient operation of the program and the confidence of the clients served including, as applicable, their parents or guardians.

g. The age of the individual on the date of conviction.

Note: A person refused employment or who has had his or her employment terminated and believes he or she may have been discriminated against, may file an appeal under s. 111.335, Stats., with the Equal Rights Division, Department of Workforce Development.

(4) REPORTING. (a) Child-placing agencies and county departments shall provide the department with written information about each person who is denied a license or adoption home study approval for a reason specified in s. HFS 12.10 (2).

(b) The information required under par. (a) shall include the complete name and address of the individual, the reason for denial or revocation of license or denial of adoption application as specified under s. HFS 12.10 (2) and the date of license denial or revocation or adoption application denial.

Note: Send the required information to: Bureau of Regulation and Licensing, Division of Children and Family Services, P.O. Box 8916, 1 West Wilson St., Madison, WI 53708-8916.

(5) CRIMES OF LESSER SIGNIFICANCE REQUIRING SPECIAL PRECAUTIONARY MEASURES. (a) Crimes of lesser significance. 1. An agency or entity shall impose, where warranted, less stringent measures than a bar on regulatory approval by an agency, a bar on entering into a contract for a day care program by a school board under s. 120.13 (14), Stats., or a bar of a person by an entity from employment by or contracting with an entity or permitting residency as a nonclient at an entity, if the person has been convicted of a crime of lesser significance than a serious crime and that is substantially related to the care of clients.

2. In determining whether conviction for a crime of lesser significance than a serious crime is substantially related to the care of clients, an agency or entity shall apply the criteria under sub. (3) (b).

3. Crimes of lesser significance include the following:

a. Section 940.19 (1) - Battery to other than spouse, misdemeanor only.

b. Section 943.01 (1) - Damage to property, misdemeanor only.

- c. Section 943.20 (3) (a) - Theft where value of property does not exceed \$1000.
- d. Section 943.50 (4) (a) - Retail theft where value of property does not exceed \$1000.
- e. Section 947.013 - Harassment, misdemeanor only.
- f. Section 951.02 - Mistreating animals, misdemeanor only.

(b) Less stringent measures. 1. An agency or entity shall impose, where warranted, less stringent measures on persons described under par. (a) 1., who have been convicted of a crime of lesser significance identified under par. (a) 3.

2. Less stringent measures may include but are not limited to any of the following:

a. Setting conditions for regulatory approval, such as prohibiting the person from performing specified activities or functions, no repeat of crimes or comparable acts or offenses, submission of necessary and relevant statements from therapists or counselors on the person being fit and qualified and, where appropriate, prescribed limited contact or supervised contact with clients.

b. Closer supervision or special supervision arrangements such as partnering with another person who does not have background history problems.

c. Monitoring of medication administration.

d. Prior evaluation and recommendations from an appropriate professional such as a psychiatrist or psychologist.

e. Restriction to specified on-premises activities, locations or time periods.

f. No transporting of clients.

g. Periodic testing for alcohol or drug use.

HFS 12.12 REHABILITATION REVIEW. (1) ELIGIBILITY. (a) Requester status criteria. A person may request a rehabilitation review if the person is barred for a reason under s. HFS 12.10 (2) (c) to (e) or is barred because the person has been convicted of a crime or a comparable act or offense listed as a bar with rehabilitation crime in Appendix A, and if the person meets all of the following conditions or as otherwise provided under par. (b) or (c):

1. The person was not convicted of a permanent bar crime, did not commit a comparable act or offense or, for a day care program licensed under s. 48.65, Stats., or

established under s. 120.13 (14), Stats., was not adjudicated delinquent for a permanent bar crime or comparable act or offense on or after his or her 12th birthday.

2. The person does not have a charge pending for a serious crime or a comparable act or offense under s. HFS 12.11 (1) and (2).

3. If the person is a foster home license applicant or an applicant for an adoption home study, the person has not committed a serious crime or comparable act or offense under s. 48.685 (5) (bm) 4., Stats., or a similar serious crime or comparable act or offense in another jurisdiction or the background check request is not received within 5 years of a crime committed under s. 48.685 (5) (bm) 4., Stats.

4. The person is not subject to a court order, injunction or temporary restraining order relating to the crime which is the basis for the review request.

5. The person is not a registered sex offender under s. 301.45, Stats., or under the laws of any other jurisdiction.

6. The person is not currently serving a jail commitment, including a jail sentence with work release privileges, or a prison sentence.

7. The person is not currently under the supervision of the department of corrections or otherwise on probation or parole.

8. At least one year has passed after the end of the period of any imposed incarceration, probation or parole.

9. The person has not requested a rehabilitation review for a similar type of regulatory approval or job function or activity within the last year.

(b) Eligibility criteria for existing entities, employes, contracted persons or nonclients residing at an entity. An agency need not bar and may continue the regulatory approval of an entity and an entity need not bar and may retain a person on staff or continue a contract for services with a person or permit a person to continue to reside at an entity beyond October 1, 1999, until a favorable rehabilitation review decision has been reached by the agency and all of the following are met:

1. The entity or person submits a completed rehabilitation review request form prior to October 1, 1999 to the agency that must review the rehabilitation request.

2. Except for par. (a) 7. and 8., the person shows that he or she is otherwise eligible for rehabilitation review under par. (a).

3. The person has been operating the regulated or approved entity or working for or under contract in the same capacity with the entity or residing at the entity prior to October 1, 1998.

4. The person is awaiting rehabilitation review from an agency and the agency is unable to complete a rehabilitation review for the person prior to October 1, 1999.

(c) Foster homes. An agency may allow a foster parent of a home licensed under s. 48.62 or 48.75, Stats., to continue as a foster parent and may waive the foster parent's requirement to meet the criteria under par. (a) 6., 7. and 8. if that person is otherwise eligible for a rehabilitation review under par. (a) and all of the following conditions are met:

1. None of the children in foster home placement was a witness to or the victim of the underlying crime or act for which the foster parent was charged or convicted and is seeking a rehabilitation review.

2. The foster parent has submitted to the agency a completed rehabilitation review request form for agency rehabilitation review, and the agency is persuaded by clear and convincing information that not waiving the criteria under par. (b) 6., 7. and 8. would be contrary to the best interests of the children currently placed in the foster home.

3. The agency has shown that the circumstances for waiver of the criteria under par. (b) 6., 7. and 8. do not pose any jeopardy to and will not adversely impact the care of any foster child in placement and would not be contrary to the best interests of any foster child placed in the foster home.

4. a. The agency determined that continued licensure of the foster parent is appropriate and within 3 working days of this determination submitted to the department for its consideration and approval written information that forms the basis for this conclusion.

Note: Send agency-approved determinations and supporting information for Department review and approval to: Bureau of Program and Policies, Division of Children and Families, P.O. Box 8916, Madison, WI 53708-8916

b. The agency submitted the written information under subd. 4. a. to the department within 2 weeks after the agency became aware of the reason for what would otherwise be a bar to foster home licensure until obtaining rehabilitation review approval.

5. a. The department, after reviewing the information under subd. 4., issued a written approval to the agency for continued licensure of the foster parent.

b. If the department does not agree with the agency's findings and conclusions, the agency shall immediately request the foster parent to surrender the license or, if necessary, shall deny or revoke the license of the foster parent.

Note: Send information on a denial or revocation (including voluntary surrender) of a foster home license or denial of an adoptive home study application for a reason specified in s. HFS 12.10 (2) to: Bureau of Regulation and Licensing, Division of Children and Family Services, P.O. Box 8916, 1 West Wilson St., Madison, WI 53708-8916.

(d) Rehabilitation request. 1. a. If a person asks about or requests information on rehabilitation eligibility or review, an agency shall provide to that person information on eligibility criteria for a rehabilitation review. If the person is eligible to request a rehabilitation review, the agency shall provide to the person information on how to obtain the rehabilitation review request form.

b. If an entity wishes to employ a person or contract for a person's services but the person is barred under this chapter from being employed by or contracting with the entity, the entity shall provide information to the person about the criteria for eligibility for a rehabilitation review. If the person is eligible and asks about or requests information on rehabilitation eligibility or review, the entity shall refer the person to the appropriate agency and the agency shall provide to the person information on how to obtain the rehabilitation review request form.

2. a. To request a rehabilitation review, an eligible person shall submit a completed rehabilitation review request form developed by the department, including the requested supporting documents and information, to the agency which regulates the entity or, for a day care provider under s. 120.13 (14), Stats., to the school board.

b. An agency may not consider a person's request for rehabilitation review until all information requested on the rehabilitation review request form is provided.

(2) REVIEW PROCEDURES. (a) Processing rehabilitation review requests. Upon receipt of a person's completed rehabilitation review request form, including supporting documentation and other requested information, the agency shall appoint a panel of at least 2 persons to review the information submitted.

(b) Rehabilitation request information review. 1. The agency rehabilitation request review panel shall meet within 90 working days following the agency's receipt of a complete rehabilitation review request form, to review the request and issue a written decision. The panel may request additional information from the person or from other agencies or persons familiar with the person requesting the review.

2. The rehabilitation request review panel shall give the person an opportunity to appear before the review panel to answer any questions the review panel may have.

(c) Rehabilitation decision. Upon review of the information obtained, the agency review panel shall decide whether the information provided establishes by clear and convincing evidence that the person is rehabilitated so that the bar to regulatory approval, employment, contracting or residency may be lifted and the person may be eligible for the position indicated in the rehabilitation review request form. The panel shall consider at least the following factors, as applicable:

1. Favorable personal reference checks and favorable comments from other persons and agencies identified in the written request.

2. Proof of successful completion of parole, probation, incarceration or work release privileges.

3. Proof that the person has not had subsequent contacts with law enforcement leading to probable cause and arrest or other regulatory enforcement agencies.

4. No information to indicate that the person has any pending or existing arrest warrants or civil judgements or other legal enforcement actions.

5. Aggravating or mitigating circumstances surrounding the crime, act or offense.

6. Evidence of rehabilitation, including public or community service, volunteer work, recognition by other public or private authorities for accomplishments or efforts.

7. Statements from therapists, counselors and other professionals.

8. Attempts or efforts at restitution.

9. Victim's impact statement, if appropriate.

10. Employment history, including demonstrated ability to develop positive social interaction and increased independence or autonomy of daily living.

(d) Rehabilitation review decision. 1. The review panel's decision shall be in writing and sent to the requester with a copy provided to the entity, as applicable.

2. a. If the agency finds sufficient evidence to support rehabilitation approval, the decision shall indicate, as applicable, that the person is eligible for regulatory approval or for employment, contracting or residency at an entity. The decision shall describe the scope of the rehabilitation approval indicating any conditions or limitations, that is, whether the approval is only for certain job functions, activities or arrangements and for what type of entity.

b. A rehabilitation approval under this subdivision does not of itself ensure that a person will receive agency approval to operate an entity or approval to contract with an entity or to be hired or employed by an entity or be permitted to reside at an entity.

3. If the agency review panel's decision is to deny a rehabilitation request, the written response shall explain the reasons for denial and inform the applicant that he or she has the right to appeal that decision as follows:

a. Any person who fails under subd. 1., to demonstrate to the department or to a child-placing agency that he or she has been rehabilitated and should be considered eligible for regulatory approval or for employment at or contracting with or residency as a nonclient at an entity, may appeal to the secretary or his or her designee within 10 days of the written response. Any person adversely affected by a decision of the secretary or his or her designee under this paragraph has a right to a contested case hearing under ch. 227, Stats.

b. Any person who fails under subd. 1., to demonstrate to the county department that he or she has been rehabilitated and should be considered eligible for regulatory approval or for employment at or contracting with or residency as a nonclient at an entity, may appeal to the director of the county department or his or her designee within 10 days of the written response. Any person who is adversely affected by a decision of the director or his or her designee under this paragraph has a right to appeal the decision under ch. 68, Stats.

c. Any person who fails under subd. 1., to demonstrate to the school board that he or she has been rehabilitated and should be considered eligible for regulatory approval or for employment at or contracting with or residency as a nonclient at an entity, may appeal to the superintendent of public instruction or his or her designee within 10 days of the written response. Any person who is adversely affected by a decision of the superintendent or his or her designee under this paragraph has a right to a contested case hearing under ch. 227, Stats.

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

5. When the decision is issued to the requester, the agency's review panel shall send a completed copy of the department's required reporting form regarding any rehabilitation decision and any subsequent appeals to the subunit of the department responsible for collecting that information.

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

(e) Appeal. 1. A person aggrieved by an agency's decision under par. (d) 3. a or c. that the person did not produce sufficient evidence to support rehabilitation approval may request a hearing on that decision by filing a written request for a hearing with the department of administration's division of hearings and appeals within 10 days after receiving the notice under par. (d) 1. b. A person aggrieved by an agency's decision under par. (d) 3. b. may file an action with the local circuit court.

2. The appellant shall bear the burden of proving by a preponderance of the evidence that, as applicable, the department or the county department abused its

discretion in deciding that the person did not show sufficient evidence to support rehabilitation approval.

(f) Hearing appeals and decisions. 1. If an appellant under par. (e) files a timely appeal, the department of administration's division of hearings and appeals shall hold a hearing in accordance with s. 227.42, Stats., within 90 days after receiving the appeal and shall issue a written decision within 30 calendar days after the conclusion of the hearing.

Note: Submit a request for a hearing under par. (d) 3. a. or c. to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

2. The division of hearings and appeals shall provide copies of the written decision to the appellant, the agency involved in the initial rehabilitation review and the department's office of legal counsel.

(3) REHABILITATION APPROVAL COMPLIANCE. (a) Approval status. A person under sub. (1) (a) who has had his or her rehabilitation review request approved under sub. (2) (d) and subsequently received regulatory approval or was hired by or contracted with or permitted to reside at an entity, shall comply with a condition and limitations included with the approval. A person who fails to comply with the conditions for rehabilitation approval or who subsequently commits a crime, act or offense that is cause for a bar under s. HFS 12.10 (2) shall, as provided under par. (b), have his or her rehabilitation approval withdrawn by the approving agency.

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

1. The person fails to comply with a condition or limitation of an approval granted under sub. (2) (d).

2. The person is no longer eligible for regulatory approval or for employment at, contracting with or residency at an entity under s. HFS 12.10 (2).

3. The person knowingly submitted false information or withheld pertinent information relevant to the rehabilitation request that otherwise would or could have affected the review panel's decision under sub. (2) (d) to approve the person's rehabilitation.

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

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

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

(d) Appeal rights. Any person who has had his or her rehabilitation approval withdrawn under par. (b) 1. or 3. may file an appeal of this decision as provided under sub. (2) (d) 3.

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

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

(4) SCOPE OF AGENCY REHABILITATION APPROVAL. (a) Limit. An agency may only grant rehabilitation approval within the scope of its regulatory authority and for the job activity or function identified in the rehabilitation review request. An approval is not transferable outside the scope of the agency's regulatory authority or to job functions or activities different from those specified in the rehabilitation approval.

Note: To illustrate: An approval to be a foster parent by one county is not, unless approved by the other county, transferable to the other county; an approval by the Department for a person to work as a shipping clerk in a hospital or nursing home is not transferable to the function or activity of patient care unless a rehabilitation review approval specifically for patient care is completed and approved by the regulatory agency subunit of the department responsible for review of rehabilitation requests for hospitals and nursing homes; and rehabilitation approval for employment at a day care center for children is not transferable to a child caring institution or to a hospital or nursing home.

(b) Approval transfer condition. A rehabilitation approval is transferable without need for another rehabilitation review under one of the following applicable conditions:

1. In the case of an entity, the person's job title, function, duties and circumstances approved in the rehabilitation approval are the same or similar when moving from one entity to another of the same type and the receiving entity has determined that the person does not pose a risk to clients.

2. In the case of an agency, the rehabilitation approval is transferable to another agency with the approval of the receiving agency. If the regulatory agency is the

department, the receiving regulatory subunit of the department shall decide whether a rehabilitation approval is transferable to that regulatory subunit.

(c) Request to transfer rehabilitation approval. 1. Upon receiving notification on a completed background information form that an applicant for regulatory approval, a job or a contract or a prospective nonclient resident has had a rehabilitation review under sub. (2) (d), an agency or entity shall request from the rehabilitation review agency a copy of the rehabilitation decision. If the decision of the rehabilitation review agency was to issue a rehabilitation approval, the agency or entity shall determine whether the approval is acceptable for transferring the rehabilitation approval to a new or different regulatory approval, job function or activity or nonclient residency for which the applicant is now applying.

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

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

SUBCHAPTER III - BACKGROUND INFORMATION COLLECTION

HFS 12.20 BACKGROUND INFORMATION GATHERING AND SCREENING

(1) **BACKGROUND INFORMATION FORM.** (a) Agency responsibilities. 1. The department shall require a person who applies for regulatory approval to operate or continue the operation of an entity to complete the department's background information form.

2. A county department or child-placing agency shall require a person who applies for issuance or renewal of a license to operate a foster home or who seeks adoption home study approval to complete the department's background information form.

3. A school board shall require a person who proposes to contract with or renew a contract with the school board under s. 120.13 (14), Stats., to provide a day care program to complete the department's background information.

Note: To obtain a master copy of DHFS - 64 Background Information Disclosure form, in order to reproduce it, either download the form from the Department's internet website at: www.dhfs.state.wi.us, then click on "News and Initiatives" and then on "Caregiver Background and Criminal History Checks," or you may request a copy of the form from the agency that regulates your entity.

(b) Entity responsibilities. 1. An entity shall require a person who applies for employment with the entity or who proposes to contract with the entity or to reside at the entity, and who will have access to the entity's clients, to complete the department's background information form, as well as all current employees of the entity, persons under contract with the entity and nonclients residing at the entity.

2. An entity shall maintain on file completed background information forms, updated every 4 years, for all person who are employees of the entity or contractors with the entity, who are under the entity's control and who have or are expected to have, access to the entity's clients. This does not include persons with whom the entity contracts or employs to perform infrequent or sporadic services, including maintenance services and other services not directly related to the care of a client. Nor, as provided under sub. (2) (b) 1. and 4., does it include the background information forms for persons under age 18 who work for a day care program licensed under s. 48.65, Stats., or contracted for or established under s. 120.13 (14), Stats.

(c) Penalties for false information or failure to report. 1. Any person who knowingly and intentionally provides false information or omits information on the department's background information form under par. (a) or (b) or who subsequently fails to report any information about a pending charge or conviction for a crime or other act or offense requested on the background information form may be required to forfeit not more than \$1,000 and may as appropriate be subject to additional sanctions as determined by the agency, including one or more of the following:

a. Denial or revocation of regulatory approval or the termination of a contract by an agency.

b. Denial of employment or a contract by an entity.

c. Termination of employment or a contractual relationship by an entity.

d. Special conditions or limitations placed upon the person by an agency, including restriction to an off-premises location during business hours or otherwise restricting access to clients.

e. Assessment by a health care professional of whether the person is fit and qualified before allowing the person to be on the premises.

2. A person under par. (a) shall report to the agency and under par. (b) to the entity by the next working day information about any pending charge or conviction for a crime or other act or offense noted on the background information form.

3. a. An entity shall, as soon as possible, report to the agency which gave regulatory approval or to the school board which the day care entity contracts with under s. 120.13 (14), Stats., when a signatory or other legal party to the entity application for regulatory approval or under which a contract under s. 120.13 (14),

Stats., is signed or who is a nonclient who resides at the entity has been charged with or has committed a crime or a comparable act or offense under s. HFS 12.10 (2).

b. An entity shall, as soon as possible, report to the agency which gave regulatory approval or to the school board which the day care entity contracts with under s. 120.13 (14), Stats., when a new nonclient resides or is expected to reside at the entity.

4. An entity shall include in its personnel or operational policies a provision that requires employed staff or contracted persons or persons residing at the entity to notify the entity as soon as possible when the person has been charged with or has committed any crime or comparable act or offense specified under s. HFS 12.10 (2).

(2) BACKGROUND INFORMATION FORM PROCESSING AND FILING. (a) Background information evaluation. 1. An agency or an entity, upon review of the information provided on a completed background information form, shall comply as applicable with the provisions under s. HFS 12.10 (1) (a) and (b) and s. HFS 12.11 (1) and (2), and (3) and (5).

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

b. If the background information form completed by a person under sub. (1) (b) indicates that the person as a nonclient resident is not ineligible to be permitted to reside at an entity for a reason specified in ss. HFS 12.10 (2) and HFS 12.11 (1) and (2) or as otherwise may apply under HFS 12.11 (3), and if an entity otherwise has no reason to believe that the person is ineligible to be permitted to reside as a nonclient resident at an entity, the entity may permit the person to reside at the entity for not more than 60 days pending receipt of the information required under s. HFS 12.21 (1) (a) 1. in order to determine compliance with s. HFS 12.10 (2) and s. HFS 12.11 (1) and (2) and as may apply under s. HFS 12.11 (3).

c. Pending receipt and review on the information as provided in this subd. 2. a. and b., an entity shall provide supervision for a person who is employed, contracted with or who is not a client and is permitted to reside at an entity. Supervision shall include at minimum periodic direct observation of the person.

d. The department, a county department or a child-placing agency may license a foster home or approve an adoption home study, and a school board may contract with a person under s. 120.13 (14), Stats., if the background information form completed by the applicant and as applicable, any nonclient resident of the applicant indicates that they are not ineligible and conditioned on the receipt of the information specified in s. HFS 12.21 in order to determine that the person is not ineligible to be licensed, approved or contracted with for a reason specified under s. HFS 12.10 (2).

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

Note: For the Department and for county departments and child-placing agencies that license foster or treatment foster homes under s. 48.62 and 48.75, Stats., or that approve adoptive parent applicant home studies, this may mean delaying issuance of a license or an adoption approval or placing conditions on a license or adoption approval as provided under s. HFS 12.11 (5) (b).

(b) Filing of background information form. 1. An entity shall send completed background information forms to the department for persons specified under sub. (1) (a) who are regulated by the department, persons specified under sub. (1) (b) 2., who are nonclient residents or prospective nonclient residents of an entity that is regulated by the department and persons who are under 18 years of age, but not under 12 years of age, who are employes, prospective employes, contractors or prospective contractors of a day care center licensed under s. 48.65, Stats., or contracted by a school board under s. 120.13 (14), Stats., and other persons as the department may identify.

2. An entity shall send completed background information forms to the county department for persons specified under sub. (1) (a) who are licensed or adoptive parent applicants studied by a county department, persons specified under sub. (1) (b) 2. who are nonclient residents or prospective nonclient residents of an entity that is licensed or in a home studied for adoptive parent applicant approval by the county department, and other persons as the department may identify.

3. An entity shall send completed background information forms to the child-placing agency for persons specified under sub. (1) (a) who are licensed by a licensed child-placing agency or who are adoptive parent applicants studied, persons specified under sub. (1) (b) 2. who are nonclient residents or prospective nonclient residents of an entity that is licensed by a licensed child placing agency or in a home studied for adoptive parent applicant approval, and other persons as the department may identify.

4. An entity shall send completed background information forms to the school board for persons specified under sub. (1) (a) who are established by a school board, persons specified under sub. (1) (b) 2. who are nonclient residents or prospective nonclient residents of an entity established by a school board, or persons who are under 18 years of age, but not under 12 years of age, and who are employes, prospective employes, of a day care program that is established under s. 120.13 (14), Stats., and other persons as the department may identify.

5. An entity shall maintain the background information forms for persons identified under sub. (1) (b) 1. on file for inspection by the agency.

(c) Confidentiality. Agencies and entities shall maintain on file all completed department background information forms required under this section and shall comply with applicable federal and state confidentiality laws.

HFS 12.21 SEARCH FOR CRIMINAL AND OTHER BACKGROUND HISTORY INFORMATION. (1) INITIAL SEARCHES. (a) Agency responsibilities. 1. Subject to

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

a. A criminal history search from the records maintained by the department of justice and, if applicable, from records maintained by a native American tribal court.

b. Any finding of misconduct included in the caregiver misconduct registry under ch. HFS 13.

c. Information maintained by the department of regulation and licensing regarding the status of the person's credentials, as applicable.

d. Any information maintained by the department regarding a substantiated report of child abuse or neglect against the person.

Note: The department or a county department should meet the provision of s. HFS 12.21 (1) (a) 1. d., by checking with the appropriate county department of social or human services for any substantiated child abuse or neglect report as provided under s. 49.981 (7) (a) 9. and 13., Stats.

e. Any information maintained by the department under ss. 48.685 (2) (am) 5., 48.651 (2m), 48.75 (1m), 50.065 (2) (am) 5., Stats., or under s. 120.13 (14), Stats., regarding any denial to the person of a license, continuation or renewal of a license, certification or a contract, or approval to operate an entity for a reason specified in s. HFS 12.10 (2), along with any condition imposed for any regulatory approval and regarding any denial to the person of employment at , a contract with or permission to reside at an entity for a reason specified in s. HFS 12.10 (2).

2. If the information obtained under subd. 1.e. indicates that the person has been denied a license, continuation or renewal of a license, certification, a contract, employment or permission to reside at an entity, the agency need not obtain the information specified in subd. 1. a. to d.

3. The department shall obtain the information specified under subd. 1. with respect to a person who is under 18 years of age but not under 12 years of age and who is an employe, prospective employe, contractor, prospective contractor or

otherwise a nonclient resident or prospective nonclient resident of a day care center licensed under s. 48.65, Stats., or contracted for under s. 120.13 (14), Stats.

4. A school board shall obtain the information specified under subd. 1. with respect to a person who is under 18 years of age but not under 12 years of age and who is an employe, prospective employe, contractor, prospective contractor or otherwise a nonclient resident or prospective nonclient resident of a day care program established under s. 120.13 (14), Stats.

(b) Entity responsibilities. 1. a. Subject to par. (a) 2., 3. and 4., an entity shall obtain all of the information under par. (a) 1. with respect to an adult person who is an employe, prospective employe, contractor or prospective contractor of the entity and who has or is expected to have access to the entity's clients.

b. Subdivision. 1. a. does not apply with respect to a person the entity employs or contracts with to perform infrequent or sporadic services, including maintenance services and other services that are not directly related to the care or treatment of a client.

2. a. If an entity wants to hire or contract with a person for whom, within the last 4 years, the information required under par. (a) 1. a. to c. and e. has been obtained either by another entity or by a temporary employment agency, the entity may request the information required under par. (a) 1. a. to c. and e. from that other entity or temporary employment agency. Information under par (a) 1. d. shall be obtained from the department.

b. If an entity cannot obtain the information required under par. (a) 1. a. to c. and e. from another entity or from a temporary employment agency or if an entity has reasonable grounds to believe that the information obtained from another entity or from a temporary employment agency is no longer accurate, the entity shall obtain that information from the sources under par. (a) 1. a. to c. and e. and from the department under par. (a) 1. d.

(c) Persons under age 18. 1. Notwithstanding par. (a) 1. and (b) 1. a., an agency is not required to obtain the information specified under par. (a) 1. and an entity is not required to obtain the information specified under par. (b) 1. a., for a person under 18 years of age whose background information form indicates that the person is not ineligible to be employed, contracted with or permitted to reside at an entity for a reason specified in s. HFS 12.10 (2), and for whom the department, county department, child-placing agency, school board or entity otherwise has no reason to believe the person is ineligible to be employed, contracted with or permitted to reside at the entity.

2. Subdivision. 1. does not apply with respect to a person under 18 years of age but not under 12 years of age who is an employe, prospective employe, contractor, prospective contractor, nonclient resident or prospective nonclient resident of a day care center that is licensed under s. 48.65, Stats., or established or contracted for under s.

120.13 (14), Stats., and for whom the department or school board is required under par. (a) 3. or 4. to obtain the background information.

3. Subdivision. 1., does not preclude an agency from obtaining, at its discretion, the information specified in par. (a) 1. with respect to a person described under this paragraph who is a nonclient resident or a prospective nonclient resident of an entity.

(d) Out-of-state records search. If a person who is the subject of a search under par. (a) 1. or par. (b) 1. a. is not a resident of this state, or if at any time within the last 3 years preceding the date of the search that person has not been a resident of this state, the agency or entity shall make a good faith effort to obtain from the state in which the person is or was a resident within the past 3 years preceding the date of the search information that is equivalent to the criminal history information specified in par. (a) 1. a.

(e) Armed forces records search. If a person who is the subject of a search under par. (a) 1. or (b) 1. a. was in a branch of the U.S. armed forces, including any reserve component, within the last 3 years, the agency or entity shall make a good faith effort to obtain the discharge status of that person, either from the discharge papers issued to the person or from the armed forces branch in which the person served. If the discharge status is dishonorable or a general discharge, the agency or entity shall obtain information on the nature and circumstances of the discharge.

(2) SEARCHES EVERY 4 YEARS. (a) Agency responsibilities. 1. At least every 4 years an agency shall request the information specified in sub. (1) (a) 1. for all persons who are approved to operate an entity and for all persons specified in s. HFS 12.10 (1) (b) who are nonclient residents at an entity, and the department and school board shall request the information specified in sub. (1) (a) 1. for all persons under 18 years of age but not under 12 years of age who are employees, contractors or nonclient residents of a day care center licensed under s. 48.65, Stats., or a day care program established or contracted with under s. 120.13 (14), Stats.

2. a. Except as provided in this subd. 2. b., an agency may charge an entity a fee for obtaining the information required under subd. 1. The fee may not exceed the reasonable cost of obtaining the information.

b. No fee may be charged to a nurse's assistant, as defined in s. 146.40 (1) (d), Stats., for obtaining or maintaining information if to do so would be inconsistent with federal law.

(b) Entity responsibilities. 1. At least every 4 years, an entity shall request the information specified in sub. (1) (a) 1. for all persons who are employees or contractors of the entity and who have access to clients of the entity, other than for persons under 18 years of age but not under 12 years of age who are employees or contractors, or otherwise are nonclient residents of a day care center licensed under s. 48.65, Stats., or a day care program established or contracted for under s. 120.13 (14), Stats.

2. Notwithstanding subd.1., if an agency has obtained the information required under par. (a) with respect to a person who is also an employe, contractor or nonclient resident of an entity, the entity is not required to obtain that information for that person.

(3) **CRIMINAL BACKGROUND AND OTHER INFORMATION FILING.** Agencies and entities shall maintain on file the most recent information under sub. (1) (a) 1. gathered as required under this section and shall comply with applicable federal and state confidentiality laws.

APPENDIX A

CRIMES LIST

(See s. HFS 12.11 (1) and (2))

This Appendix to ch. HFS 12 contains a list of Wisconsin crimes current as of September 16, 1998. THE LIST IS NOT EXHAUSTIVE OF THE CRIMES THAT MUST BE TAKEN INTO CONSIDERATION BY A REGULATORY AGENCY OR EMPLOYER.

If a person has a conviction for any crime not listed here, or for a crime in another state or jurisdiction, the regulatory agency or employer must determine whether the crime is *substantially related* to the duties of the position and, if so, may not give regulatory approval to the person, employ or contract with the person or give approval for a nonclient to reside at an entity, at least not without demonstration of rehabilitation or, for a crime of lesser significance than a serious crime, the imposition of less stringent measures than a bar.

Key:

Permanent bar – conviction means permanently barred from all programs.

Foster care permanent bar – conviction means permanently barred only from foster home and treatment foster home programs.

Bar w/rehab – conviction means barred from all programs unless rehabilitation has been demonstrated.

Spouse – spouse of person convicted was victim of the crime.

5 years – conviction means barred for 5 years from time crime is committed, then must demonstrate has been rehabilitated.

(F) – program sanction is for a felony conviction only.

(M) – program sanction is for a misdemeanor conviction.

Wis. Stats. Crime (F = Felony; M = Misdemeanor) Program Sanction

Chapter 49 – Public Assistance

49.49 Medicaid fraud (F) or (M) Bar w/rehab

Chapter 346 – Rules of the Road

343.63 Operating vehicle while intoxicated (OWI) (F)
 • with passenger under age 16 Bar w/rehab
 • 3rd or greater offense Bar w/rehab

346.62(4) Reckless driving, causing great bodily harm (F) Foster care permanent bar

346.67 Hit and run, causing great bodily harm or death (F) Bar w/rehab

346.67 Hit and run, causing bodily harm or property damage (M) Bar w/rehab

Chapter 940 – Crimes Against Life and Bodily Security

940.01 1st degree intentional homicide (F) Permanent bar

Wis. Stats.	Crime (F = Felony; M = Misdemeanor)	Program Sanction
940.02	1 st degree reckless homicide (F)	Foster care permanent bar; other, bar w/rehab
940.03	Felony murder (F)	Foster care permanent bar; other, bar w/rehab
940.05	2 nd degree intentional homicide (F)	Bar w/rehab
940.06	2 nd degree reckless homicide (F)	Foster care permanent bar; other, bar w/rehab
940.07	Homicide by negligent control of vicious animal (F)	Bar w/rehab
940.08	Homicide by negligent handling of dangerous weapon, explosives or fire. (F)	Foster care permanent bar; other bar w/rehab
940.09	Homicide by intoxicated use of vehicle or firearm (F)	Bar w/rehab
940.12	Assisting suicide (F)	Bar w/rehab
940.19(1)	Battery (M –domestic)	Bar w/rehab
940.19(2)-(6)	Battery (F)	Foster care bar for 5 years if spouse; other, bar w/rehab
940.195	Battery to an unborn child (F or M)	Bar w/rehab
940.20	Battery – special circumstances (F)	Foster care permanent bar if spouse; other, bar w/rehab
940.203	Battery or threat to a judge (F)	Foster care bar for 5 years; other, bar w/rehab
940.205	Battery or threat to Department of Revenue employe (F)	Foster care bar for 5 years; other, bar w/rehab
940.207	Battery or threat to Department of Commerce employe (F)	Foster care bar for 5 years; other, bar w/rehab
940.21	Mayhem (F)	Bar w/rehab
940.22(2)	Sexual exploitation by therapist – sexual contact (F)	Bar w/rehab
940.22(3)	Sexual exploitation by therapist – duty to report (F)	Bar w/rehab
940.225(1)	1 st degree sexual assault (F)	Permanent bar
940.225(2)	2 nd degree sexual assault (F)	Permanent bar
940.225(3)	3 rd degree sexual assault (F)	Permanent bar
940.225 (3m)	4 th degree sexual assault (M)	Bar w/rehab
940.23	Reckless injury (F)	Foster care permanent bar; other, bar w/rehab

Wis. Stats.	Crime (F = Felony; M = Misdemeanor)	Program Sanction
940.285 (2)(b)1 or 2	Abuse of vulnerable adults (F)	Permanent bar
940.285 (2)(b)3, 4, or 5	Abuse of vulnerable adults (F or M)	Bar w/rehab
940.29	Abuse of residents of a penal facility (F)	Permanent bar
940.291	Law enforcement officer – failure to render aid (M)	Bar w/rehab
940.295	Abuse/neglect of a patient or resident (F)	Permanent bar
940.295	Abuse/neglect of a patient or resident (M)	Bar w/rehab
940.30	False imprisonment (F)	Bar w/rehab
940.305	Taking hostages (F)	Bar w/rehab
940.31	Kidnapping (F)	Bar w/rehab
940.32	Stalking (F or M)	Bar w/rehab
940.43	Intimidation of witnesses (F or M)	Bar w/rehab
940.45	Intimidation of victims (F or M)	Bar w/rehab

Chapter 941 – Crimes Against Public Health and Safety

941.20	Endangering safety - dangerous weapon (M)	Bar w/rehab
941.20(2)	Endangers safety – dangerous weapon, discharge weapon into vehicle/building (F)	Foster care permanent bar; other, bar w/rehab
941.20(3)	Endangers safety – dangerous weapon, discharge weapon from vehicle (F)	Foster care permanent bar; other, bar w/rehab
941.21	Disarming a peace officer (F)	Foster care permanent bar
941.235	Carrying a firearm in public building (M)	Bar w/rehab
941.26	Sale, possession, use or transport of machine guns or certain other weapons (F)	Bar w/rehab
941.28	Possession of short barreled shotgun/rifle (F)	Bar w/rehab
941.29	Possession of firearm (F)	Bar w/rehab
941.296	Use or possession of a handgun and armor-piercing bullet during crime (F)	Bar w/rehab
941.298	Sale, delivery or possession of firearm silencer (F)	Bar w/rehab
941.30	Recklessly endangering safety (F)	Bar w/rehab

941.31	Possession of explosives (F)	Bar w/rehab
941.315	Possession, distribution or delivery of nitrous oxide (F)	Bar w/rehab
941.32	Administering dangerous or stupefying drug (F)	Bar w/rehab
941.327	Tampering with household product (F)	Bar w/rehab
941.38 (2)	Criminal gang member, solicit child (F)	Bar w/rehab
941.38 (3)	Criminal gang member solicitation and contact (F)	Bar w/rehab

Chapter 942 – Crimes Against Reputation and Civil Liberty

942.08	Invasion of privacy (M)	Bar w/rehab
--------	-------------------------	-------------

Chapter 943 – Crimes Against Property

943.01	Damage to property (F)	Bar w/rehab
943.011	Damage or threat to property of witness (F)	Bar w/rehab
943.02	Arson; damage of property by explosives (F)	Bar w/rehab
943.03	Arson of property other than building (F)	Bar w/rehab
943.04	Arson with intent to defraud (F)	Bar w/rehab
943.06	Molotov cocktails (F)	Bar w/rehab
943.10 (1)	Burglary (F)	Bar w/rehab
943.10 (2)	Burglary while armed (F)	Foster care permanent bar; other, bar w/rehab
943.12	Possession of burglarious tools (F)	Bar w/rehab
943.20	Theft (F)	Bar w/rehab
943.201	Misappropriation of personal identifying information or documents (F)	Bar w/rehab
943.23	Operating motor vehicle without owner's consent -- w/weapon & force (F)	Bar w/rehab
943.30	Threat to injure or accuse of crime (blackmail) (F)	Bar w/rehab
943.31	Threat to communicate derogatory information (F)	Bar w/rehab
943.32 (1)	Robbery (F)	Bar w/rehab
943.32 (2)	Robbery w/dangerous weapon (F)	Bar w/rehab

943.50	Retail theft (F)	Bar w/rehab
--------	------------------	-------------

Chapter 944 – Crimes Against Sexual Morality

944.17	Sexual gratification (M)	Bar w/rehab
--------	--------------------------	-------------

944.20	Lewd and lascivious behavior (M)	Bar w/rehab
--------	----------------------------------	-------------

944.205	Photos or other representations showing nudity (F)	Bar w/rehab
---------	--	-------------

944.21	Obscene material or performance (F or M)	Bar w/rehab
--------	--	-------------

944.23	Making lewd, obscene or indecent drawings (M)	Bar w/rehab
--------	---	-------------

944.30	Prostitution (M)	Bar w/rehab
--------	------------------	-------------

944.32	Soliciting prostitutes (F)	Bar w/rehab
--------	----------------------------	-------------

944.33	Pandering (F or M)	Bar w/rehab
--------	--------------------	-------------

944.34	Keeping place of prostitution (F)	Bar w/rehab
--------	-----------------------------------	-------------

Chapter 946 – Crimes Against Government and Its Administration

946.415	Failure to comply w/officer’s attempt to take person into custody (F)	Bar w/rehab
---------	---	-------------

946.42	Escape from custody (F)	Bar w/rehab
--------	-------------------------	-------------

946.43	Assault by prisoner – confine or threaten to harm (F)	Bar w/rehab
--------	---	-------------

946.44	Assisting/permitting escape (F)	Bar w/rehab
--------	---------------------------------	-------------

946.47	Harboring a felon (F)	Bar w/rehab
--------	-----------------------	-------------

946.50	Absconding – juvenile (F)	Bar w/rehab
--------	---------------------------	-------------

946.70	Impersonating peace officer to commit crime (F)	Bar w/rehab
--------	---	-------------

946.74(1)	Aiding escape from mental institution (M)	Bar w/rehab
-----------	---	-------------

946.74(2)	Aiding escape from mental institution to commit sex crime (F)	Permanent bar
-----------	---	---------------

946.80 – 946.88	Racketeering (organized crime, RICO) (F)	Bar w/rehab
--------------------	--	-------------

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

947.0133	Harassment (F)	Bar w/rehab
----------	----------------	-------------

Chapter 948 – Crimes Against Children

948.02 (1)	1 st degree sexual assault of a child (F)	Permanent bar
------------	--	---------------

Wis. Stats.	Crime (F = Felony; M = Misdemeanor)	Program Sanction
948.02 (2)	2 nd degree sexual assault of a child (F)	Bar w/rehab
	<ul style="list-style-type: none"> if person was, at the time of assault, more than 4 years older than the child 	Permanent bar
948.02(3)	Sexual assault of a child – failure to act (F)	Permanent bar
948.025	Repeated acts of sexual assault of same child (F)	
	<ul style="list-style-type: none"> if child was under the age of 13 	Permanent bar
	<ul style="list-style-type: none"> if child was age 13, 14 or 15 and person was, at the time, more than 4 years older than the child 	Foster care permanent bar; other, bar w/rehab
	<ul style="list-style-type: none"> other 	Foster care permanent bar; other, bar w/rehab
948.03 (2)(a)	Physical abuse of a child – intentionally causes great bodily harm (F)	Permanent bar
948.03(2)(b) or (c)	Physical abuse of a child-intentionally causes bodily harm (F)	Foster care permanent bar, other, bar w/rehab
948.03 (3)	Physical abuse of a child – recklessly causes bodily harm (F)	Foster care permanent bar; other, bar w/rehab
948.03 (4)(a)	Physical abuse of a child involving great bodily harm – failure to act (F)	Permanent bar
948.03(4)(b)	Physical abuse of a child involving bodily harm – failure to act (F)	Foster care permanent bar; other, bar w/rehab
948.04	Causing mental harm to a child (F)	Permanent bar
948.05	Sexual exploitation of a child (F)	Permanent bar
948.055	Causing a child to view or listen to sexual activity (F)	Permanent bar
948.06	Incest with a child (F)	Permanent bar
948.07	Child enticement (F)	Permanent bar
948.08	Soliciting a child for prostitution (F)	Permanent bar
948.09	Sexual intercourse with a child age 16 or older (M)	Bar w/rehab
948.095	Sexual assault of student by a school staff person (F)	Foster care permanent bar; other, bar w/rehab
948.10	Exposing genitals or pubic area (M)	Bar w/rehab
948.11	Exposing child to harmful material or harmful descriptions or narrations (F)	Permanent bar
948.11	Exposing child to harmful material or harmful descriptions or narrations (M)	Bar w/rehab

Wis. Stats.	Crime (F = Felony; M = Misdemeanor)	Program Sanction
948.12	Possession of child pornography (F)	Permanent bar
948.13	Child sex offender working with children (F)	Permanent bar
948.20	Abandonment of a child (F)	Foster care permanent bar; other, bar w/rehab
948.21	Neglecting a child – intentional, resulting in death (F)	Permanent bar
948.21	Neglecting a child – intentional (M)	Bar w/rehab
948.22	Failure to support (F)	Foster care permanent bar
948.23	Concealing death of a child (F)	Foster care permanent bar; other, bar w/rehab
948.24	Unauthorized placement for adoption (F)	Foster care permanent bar; other, bar w/ rehab
948.30	Abduction or detention of another’s child (F)	Permanent bar
948.31	Interference with custody by parent or others (F)	Foster care permanent bar; other, bar w/rehab
948.35	Solicitation of a child to commit a felony (F)	Foster care permanent bar; other, bar w/rehab
948.36	Use of a child to commit a class A felony (F)	Permanent bar
948.40	Contributing to the delinquency of a minor (F)	Foster care permanent bar; other, bar w/rehab
948.51	Hazing (F)	Foster care permanent bar; other, bar w/rehab
948.55	Leaving or storing a loaded firearm within the reach or easy access of a child (M)	Bar w/rehab
948.60	Possess dangerous weapon by a person under 18 (F)	Foster care permanent bar; other, bar w/rehab
948.605 (3)	Discharge of firearm in a school zone (F)	Foster care permanent bar; other, bar w/rehab
948.61	Possess dangerous weapon other than firearm on school premises (F)	Foster care permanent bar; other, bar w/rehab
948.62	Receiving stolen property from a child (F)	Foster care permanent bar
948.--	All other ch. 948 felonies	Foster care permanent bar

Chapter 951 – Crimes Against Animals

951.02	Mistreating animals (F)	Bar w/rehab
--------	-------------------------	-------------

Chapter 961 –Controlled Substances (Formerly ch. 161 crimes)

961.38	Practitioner “self-prescribing” (M)	Bar w/rehab
961	Manufacture, distribution or delivery of controlled substances (F)	Foster care bar for 5 years; other, bar w/rehab
	Possession of controlled substances w/intent to manufacture, distribute or deliver (F)	Foster care bar for 5 years; other, bar w/rehab
	Possession of a Schedule I or II controlled substance (F)	Foster care bar for 5 years; other, bar w/rehab
	Possession of a controlled substance other than a Schedule I or II controlled substance (F)	Foster care bar for 5 years; other, bar w/rehab
961.41 (3g) (c)	Possession or attempted possession of cocaine (M)	Bar w/rehab
961.42	Keep/maintain any store, warehouse, building, etc. for use manufacture or delivery of controlled substances (M)	Bar w/rehab
961.43 (1) (a)	Acquire or obtain possession of controlled substances by fraud, misrepresentation, forgery, deception or subterfuge (F)	Foster care bar for 5 years; other, bar w/rehab
961.43 (1) (b)	To possess/make a counterfeit substance or to duplicate the appearance, packaging, form or label of a controlled substance (F)	Foster care bar for 5 years; other, bar w/rehab
961.455	Using a child for illegal drug distribution or manufacturing purposes (F)	Foster care bar for 5 years; other, bar w/rehab
961.46	Distribution to persons under 18 (F)	Foster care bar for 5 years; other, bar w/rehab
961.46	Distribution to persons under 18 (M)	Bar w/rehab
961.465	Distribution to prisoners (F or M)	Foster care bar for 5 years; other, bar w/rehab
961.49	Distribution of or possession with intent to delivery at or near certain places (F)	Foster care bar for 5 years; other, bar w/rehab
961.492	Distribution of or possession with intent to delivery on public transit (F)	Foster care bar for 5 years; other, bar w/rehab
961.575	Delivery of drug paraphernalia to a minor (M)	Bar w/rehab

The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, as provided in s. 227.22 (2), Stats.

WISCONSIN DEPARTMENT OF HEALTH
AND FAMILY SERVICES

DATE:

By: _____

Joe Leean
Secretary

SEAL:

0 - 3 3 278

ORDER OF THE
DEPARTMENT OF HEALTH AND FAMILY SERVICES
CREATING RULES

FINDING OF EMERGENCY

The Department of Health and Family Services finds that an emergency exists and that the rules included in this order are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

Sections 48.685 and 50.065, Stats., recently created by 1997 Wisconsin Act 27, apply to the Department in its functions of licensing, certifying, registering or approving some persons to provide care or treatment to other persons; to county social service and human service departments that license foster homes or treatment foster homes for children and carry out adoption home studies; to private child-placing agencies licensed to do the same; and to school boards that contract for day care programs under s. 120.13(14), Stats. The law also applies to the entities licensed, certified, registered or approved and their employes or contracted service providers.

An agency is prohibited from licensing, certifying, registering or approving a person if the agency knew or should have known that the person has been convicted of, or has a pending charge for, a serious crime, is found to have abused or neglected a client or child or to have misappropriated a client's property; or is required to be credentialed by the Department of Regulation and Licensing (DRL) but whose credential is not current or is limited so as to prevent the provision of adequate client care. Similarly, entities planning to hire or contract with a person expected to have access to clients or children may not hire or contract with the person if the entity knew or should have known of the existence of a prohibited condition.

With respect to a person applying for a license to operate an entity or for approval to reside at an entity, an agency is required to obtain a criminal history search, information contained in the Department's caregiver misconduct registry, DRL information regarding credential status, if applicable, and Department information regarding any substantiated reports of child abuse or neglect and licensing history information. That information must also be obtained by entities for prospective employes and contractors.

The Department is required to develop a background information form and provide it to any regulated or approved person, and a county department and licensed child-placing agency is required to provide it to a foster home or treatment foster home applicant or pre-adoptive applicant and a school board is to provide the Department's background information form to any proposed contracted day care applicant or provider under s. 120.13 (14), Stats. Likewise, an entity is to provide the background information form to any employe or prospective employe having or expected to have access to any of its clients. If the background information form returned to an entity by an employe or prospective employe indicates that the person is not ineligible to be employed or

contracted with or permitted to reside at an entity for a reason specified under the statutes or as provided in rule, an entity may employ or contract with the person or permit the person to reside at the entity for not more than 60 days pending the receipt of background check information.

For some serious crimes that would otherwise bar a person from regulatory approval or from being employed by or under contact with or residing at an entity, the statutes permit a person convicted of a crime, provided certain conditions are met, to ask an agency for rehabilitation review, that is, for an opportunity to demonstrate that he or she is rehabilitated and so the bar can be lifted.

These are the Department's rules for administration of ss. 48.685 and 50.065, Stats., as created by Act 27 and amended by 1997 Wisconsin Act 237. The rules repeat the statutory requirements and add more detail for administering them, add procedures for handling rehabilitation review requests, add definitions for "serious crime" and "under the entity's control" and other pertinent definitions and add a crimes list as Appendix A.

The rules are being published by emergency order to take effect on October 1, 1998, the same date that the statutes they implement will take effect, rather than up to 9 months later which is how long it will take to promulgate permanent rules. The rules are necessary for implementation of the new statutes. The intent of the statutes and rules is to better protect clients of the regulated service providers from being harmed.

The new background check statutes and rules apply beginning October 1, 1998 to entities initially approved on or after that date, persons that entities hire or contract with on or after that date and nonclients who take up residence at an entity on or after that date. The statutes and rules apply beginning October 1, 1999 to entities initially approved prior to October 1, 1998, persons that entities hired or contracted with prior to October 1, 1998 and nonclients who lived at an entity prior to October 1, 1998.

ORDER

Pursuant to authority vested in the Department of Health and Family Services by ss. 48.685 (4), (5), (6) (b) and (c) and (7) (a) and (b) and 50.065 (1) (d) and (f), (4), (5), (6) (b) and (c) and (7) (a) and (b), Stats., as created by 1997 Wisconsin Act 27 and amended by Wisconsin Act 237, and s. 227.11 (2), Stats., the Department of Health and Family Services hereby creates rules interpreting ss. 48.685 and 50.065, Stats., as created by 1997 Wisconsin Act 27 and amended by 1997 Wisconsin Act 237, and s. 120.13 (14), Stats., as amended by 1997 Wisconsin Act 27, as follows:

SECTION 1. Chapter HFS 12 is created to read:

Chapter HFS 12

CAREGIVER BACKGROUND CHECKS

Subchapter I - General Provisions

HFS 12.01 Authority and Purpose

HFS 12.02 Applicability

HFS 12.03 Definitions

Subchapter II - Personnel Care Services Qualifications Assessment

HFS 12.10 Background-Related Barriers to Regulatory Approval and Client Access

HFS 12.11 Criminal and Abuse History and Client Access

HFS 12.12 Rehabilitation Review

Subchapter III - Background Information Collection

HFS 12.20 Background Information Gathering and Screening

HFS 12.21 Criminal and Background History Information Search

SUBCHAPTER 1 - GENERAL PROVISIONS

HFS 12.01 AUTHORITY AND PURPOSE. This chapter is promulgated under the authority of ss. 48.685 (4), (5) (6) (b) and (c) and (7) (a) and (b), 50.065 (1) (d) and (f), (4), (5), (6) (b) and (c) and (7) (a) and (b) and 227.11 (2), Stats., to protect clients served in department- regulated programs and in foster homes or treatment foster homes licensed by county departments of social or human services or private child-placing agencies, including homes licensed for placement of children for adoption under s. 48.833, Stats., for whom adoption assistance will be provided under s. 48.975, Stats., and pre-adoptive applicants who contract for a home study with a private child-placing agency for placement of a child for adoption and in day care programs contracted by local school boards under s. 120.13 (14), Stats., by requiring uniform background information screening of persons regulated and persons who are employed or contracted by an entity or who are nonclient residents at an entity.

HFS 12.02 APPLICABILITY. (1) **SCOPE.** (a) Persons, facilities, agencies and organizations affected. This chapter applies to the department, to applicants for a department license, certification, certificate of approval, registration, or approval for an adoption home study, to all department licensed, certified and registered persons, facilities, agencies and organizations, to foster home and treatment foster home license applicants and applicants for an adoption home study and foster home licensees of a county department or child placing agency, to school boards that contract for day care programs under s. 120.13 (14), Stats., and to applicants and persons contracted to operate a day care program under s. 120.13 (14), Stats.

(b) Entities covered. The entities subject to this chapter are those regulated under: chs. HSS or HFS 34, 38, 40, 45, 46, 52, 54, 55, 56, 57, 59, 61, 63, 83, 89, 110, 111, 112, 113, 124, 127, 131, 132, 133 and 134, Wis. Adm. Code, and any other direct client care or treatment program that may be licensed, certified or registered by the department, including programs under ch. HSS 82 and 88, Wis. Adm. Code.

(2) **IMPLEMENTATION.** (a) Agencies and new entities. Beginning October 1, 1998, all agencies and all prospective entities and all prospective employes of an entity, persons wishing to contract with an entity and prospective nonclient residents of an entity who will have access to clients and be under the entity's control shall comply with this chapter.

(b) Existing entities. Beginning October 1, 1999, an entity that existed prior to October 1, 1998, all employes or persons under contract with the entity and nonclient residents living at the entity having access to entity clients prior to and since October 1, 1998, shall comply with this chapter.

(c) Child abuse and neglect reports. An agency other than a school board shall meet the provision of s. HFS 12.21 (1) (a) 1. d., by checking with the appropriate county department of social or human services for any substantiated child abuse or neglect report as provided for under s. 49.981 (7) (a) 9. and 13., Stats.

HFS 12.03 DEFINITIONS. (1) ALL PROGRAMS. In this chapter:

(a) "Agency" means the department, a county department, a child-placing agency licensed under s. 48.60, Stats., as a child-placing agency or a school board.

(b) "Background information form" refers to the department self-disclosure form that requires a person to provide certain information concerning the person's background.

(c) "Bar" means, as a noun, that a person is not permitted to receive regulatory approval or to be employed by or be under contract with an entity or to reside at an entity.

(d) "Caregiver" means a person who is employed by or under contract with an entity and who has access to the entity's clients and who is under the entity's control.

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

(f) "County department" means a county department of social services established under ss. 46.215 or 46.22, Stats., or a county department of human services established under s. 46.23, Stats.

(g) "Crimes list" means the list of statutes in appendix A.

(h) "Department" means the Wisconsin department of health and family services.

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

(j) "Permanent bar crime" means a crime listed in part I or II of the crimes list in appendix A.

(k) "Rehabilitation review" refers to an agency process where a person who is eligible under this chapter may seek removal of a bar for purposes of regulatory approval, employment, contracting or residency with an entity.

(l) "Serious crime" means a crime identified under s. HFS 12.11 (1) (b) and (c) and (2).

(m) "Under the entity's control" means that an entity, other than as provided under s. HFS 12.21 (1) (b) 2., may choose and affect whether a person who is employed by or contracted with the entity or who is a nonclient resident of the entity and may have contact with clients the entity serves.

(n) "Unit of government" or "state agency" means any officer, commission, board, department or bureau of state government.

(2) CHAPTER 48 REGULATED CHILDREN'S PROGRAMS. In this chapter:

(a) "Adoption home study" means an evaluation of a prospective adoptive family under ch. HSS 51 or 54.

(b) "Child-placing agency" means a child welfare agency licensed under s. 48.60, Stats., as a private child-placing agency.

(c) "Entity" means a child welfare agency licensed as a child-placing agency under s. 48.60, Stats., to provide care and maintenance for children, to place children for adoption or to license foster homes or treatment foster homes, or licensed under s. 48.60, Stats., as a child caring institution to provide residential care and treatment; a group home licensed under s. 48.625, Stats.; a shelter care facility licensed under s. 938.22, Stats.; a day care center licensed under s. 48.65, Stats., or contracted for under s. 120.13 (14), Stats., or a foster home or treatment foster home licensed under s. 48.62 or 48.75, Stats.; including a home licensed for placement of children for adoption under s. 48.833, Stats., for whom adoption assistance will be provided under s. 48.975, Stats.

(d) "Regulatory approval" means issuance of a license or continuation or renewal of a license and includes an adoptive parent applicant home study approval by the department or issuance by a county department or licensed child placing agency of, or renewal of, a foster home or treatment foster home license under s. 48.62 or 48.75, Stats., including homes licensed for placement of children for adoption under s. 48.833, Stats., for whom adoption assistance will be provided under s. 48.975, Stats., and includes pre-adoptive applicants who contract for a home study with a licensed private child placing agency for approval of a placement of a child for adoption and includes a contract approval by a school board under s. 120.13 (14), Stats., with a day care provider to provide day care services licensed under s. 48.65, Stats.

(3) CHAPTER 50 REGULATED PROGRAMS. In this chapter:

(a) "Certificate of approval" means a certificate of approval issued under s. 50.35, Stats.

(b) "Entity" means a facility, organization or service licensed or certified by or registered with the department to provide direct care or treatment services to clients, including a hospital, a personal care worker agency or a supportive home care service agency, but not including a person certified as a medical assistance provider as defined in s. 49.43 (10), Stats., who is not otherwise approved under s. 50.065 (1) (cm), Stats., or licensed or certified by or registered with the department, or a public health dispensary established under s. 252.10, Stats.

(c) "Hospital" means a facility approved as a hospital under s. 50.35, Stats.

(d) "Personal care worker agency" means a home health agency licensed under s. 50.49, Stats., and ch. HSS 133 and certified as a personal care worker agency under s. HFS 105.17 (1).

(e) "Regulatory approval" means issuance by the department of a license, certification, a certificate of approval or registration, or approval of the continuation of a license, certification, certificate of approval or registration.

(f) "Supportive home care service agency" means a home health agency licensed under s. 50.49, Stats., and ch. HSS 133.

SUBCHAPTER II - PERSONAL CARE SERVICES QUALIFICATIONS ASSESSMENT

HFS 12.10 BACKGROUND-RELATED BARRIERS TO REGULATORY APPROVAL AND CLIENT ACCESS. (1) **AGENCY AND ENTITY PROHIBITIONS.** (a) Agency responsibilities. Notwithstanding s. 111.335, Stats., and as otherwise provided under s. HFS 12.20 (2) (a) 2. d. and in accordance with s. HFS 12.11 (1) and (2), the department may not give regulatory approval to a person to operate an entity or approve an adoptive home on the basis of an adoption home study, a county department or a child-placing agency may not license or renew the license of a foster home or treatment foster home under s. 48.62 and 48.75, Stats., or approve an adoption home on the basis of an adoption home study and a school board may not contract with a person under s. 120.13 (14), Stats., if the agency knows or should have known any information about the operator or other person as described under sub. (2).

(b) Entity responsibilities. Notwithstanding s. 111.335, Stats., and as provided under s. HFS 12.20 (2) (a) 2. and 3. and in accordance with s. HFS 12.11 (1) and (2), an entity may not hire or contract with a person who will be under the entity's control and who is expected to have access to its clients, or permit to reside at the entity a person who is not a client but who is expected to have access to a client, if the entity knows or should have known any information about the person as described under sub. (2).

(1m) **LIFTING OF BAR.** An agency may give regulatory approval to the operator of an entity otherwise barred under sub. (1) (a) and an entity may employ or contract with a person or may allow a person to reside at the entity who is otherwise barred under sub. (1) (b), if that person is eligible under s. HFS 12.12 (1) for rehabilitation review and makes a sufficient showing of rehabilitation as evidenced by a rehabilitation approval received from an agency under s. HFS 12.12.

(2) **REGULATORY AND PERSONAL CARE INTEGRITY STANDARDS.** An agency shall comply with sub. (1) (a) and an entity shall comply with sub. (1) (b) for any person whose background records indicate any of the following:

(a) The person has been convicted of a serious crime, act or offense or was adjudicated delinquent for a serious crime, act or offense on or after his or her 12th birthday.

(b) The person has pending against him or her a charge for a serious crime, act or offense.

(c) A unit of government or a state agency or other similar authority has made a finding that the person has abused or neglected a client or misappropriated the property of a client.

Note: Any person who is listed in the Department's caregiver misconduct registry under ch. HFS 13 as having a substantiated finding of abuse or neglect of a client or misappropriation of client's is permanently prohibited from being employed in a federally-certified nursing home or a federally-certified intermediate care facility for the mentally retarded (ICF/MR). See 42 CFR 483.13 and 483.400.

(d) A determination has been made under s. 48.981 (3) (c) 4., Stats., or other similar authority that the person has abused or neglected a child.

(e) In the case of a position for which the person must be credentialed by the department of regulation and licensing or other similar authority, the person's credential involves direct client care or treatment services and is not current or is limited so as to restrict the person from providing adequate care to a client.

HFS 12.11 CRIMINAL AND ABUSE HISTORY CLIENT ACCESS STANDARDS.

(1) **SERIOUS CRIMES AND OTHER CATEGORICALLY NONREHABILITATIVE CRIMES, ACTS OR OFFENSES.** (a) Agency or entity determinations. An agency or an entity in deciding on a bar on regulatory approval or on a bar on employment, contracting or residency at an entity, shall consider the act or offense under which a person was convicted of a crime and determine whether that act or offense is comparable in nature to acts or offenses otherwise found in appendix A which bar a person, even though the crime under which the person was convicted is a lesser crime. Crimes, acts or offenses under this section also include similar crimes, acts or offenses committed in jurisdictions outside of Wisconsin.

(b) Serious crimes, acts or offenses. No person may be granted regulatory approval to operate an entity or may be permitted to be employed, contracted with or reside at an entity if that person has been convicted of any of the following offenses or has committed any of the following acts or offenses, or who is an applicant for issuance or continuation of a license to operate a day care center or who is proposing to contract with or renew a contract with a school board under s. 120.13 (14), Stats., or who is an employe, prospective employe, contractor, prospective contractor, nonclient resident or prospective nonclient resident of a day care center and who has been convicted of any of the following offenses or adjudicated delinquent on or after his or her 12th birthday for committing any of the following offenses:

1. First degree intentional homicide under s. 940.01, Stats.

2. First degree sexual assault under s. 940.225 (1), Stats.

3. First degree sexual assault of a child under s. 948.02 (1), Stats.

4. Second degree sexual assault of a child under s. 948.02 (2), Stats., if the person was, at the time of the sexual contact or sexual intercourse, more than 4 years older than the child with whom the person had the sexual contact or sexual intercourse.

5. Repeated acts of sexual assault of the same child under s. 948.025, Stats., if the child had not attained the age of 13, or if the child had attained the age of 13 and had not attained the age of 16 and the person was, at the time of the sexual contact or sexual intercourse, more than 4 years older than the child with whom the person had the sexual contact or sexual intercourse.

(c) Other serious crimes, acts or offenses. No person may be granted regulatory approval to operate an entity or may be permitted to be employed, contracted with or reside at an entity if that person on or after his or her 12th birthday has been convicted or adjudicated delinquent of a serious crime or has committed a serious act or offense identified as a permanent bar crime in Appendix A considered substantially related to the care of a client and for which rehabilitation may not be demonstrated and that includes certain crimes, act or offenses involving abuse or neglect of a client and misappropriation of the property of a client.

(2) SERIOUS CRIMES AND DEMONSTRATION OF REHABILITATION. (a) Rehabilitation approval and removal of bar. The department may give regulatory approval to operate an entity or give approval of an adoption home, a county department or a child placing agency may license a foster home under ss. 48.62 and 48.75, Stats., or give approval of an adoption home study and a school board may contract with under s. 120.13 (14), Stats., a person who otherwise may not be regulated, certified or contracted with for a reason specified in s. HFS 12.10 (2), and an entity may employ, contract with or permit to reside at the entity a person who otherwise may not be employed, contracted with or permitted to reside at the entity for a reason specified in s. HFS 12.10 (2), if the person has not committed a crime specified under sub. (1) (b) or (c) and can demonstrate to, as applicable, the department, a county department, a child-placing agency or a school board, by clear and convincing evidence and in accordance with procedures established under s. HFS 12.12, that he or she has been rehabilitated and is eligible for regulatory approval to operate an entity or to be employed at or contract with or reside at an entity.

(b) Rehabilitation for certain serious crimes. A person under par. (a) who has not committed a serious crime identified under sub. (1) (b) and (c) and who is otherwise not ineligible, but has been convicted of other serious crimes identified as rehabilitative in the crimes list in appendix A and as provided under s. 48.685 (5) (bm) 4., Stats., or committed other acts or offenses substantially related to the care of a client as specified under s. HFS 12.10 (2) (c) to (e), including crimes or acts involving misappropriation of

a client's property or abuse or neglect of a client, may seek a rehabilitation review under s. HFS 12.12.

(c) Limitation of rehabilitation approval. A rehabilitation approval under this subsection does not of itself ensure that a person will receive agency regulatory approval or approval to operate or contract with an entity or employment at or a contractual relationship with an entity or permit a person to reside at an entity.

(3) OTHER CRIMES, ACTS OR OFFENSES SUBSTANTIALLY RELATED TO THE CARE OF A CLIENT. (a) Refusals. 1. Notwithstanding s. 111.335, Stats., the department may refuse to give regulatory approval to a person, a county department or a child-placing agency may refuse to license a foster home or treatment foster home under ss. 48.62 or 48.75, Stats., or refuse to approve an adoption home study, a school board may refuse to contract with a person under s. 120.13 (14), Stats., and an entity may refuse to employ, contract with or permit to reside at an entity a person specified under s. HFS 12.10 (1) (a) or (b), when an agency or entity determines the person has been convicted of a crime, act or offense not otherwise identified under sub. (1) or (2) which is substantially related to the care of a client.

2. Notwithstanding s. 111.335, Stats., the department may refuse to license a person to operate a day care center or a school board may refuse to contract with a person under s. 120.13 (14), Stats., a day care center that is licensed under s. 48.65, Stats., or contracted for under s. 120.13 (14), Stats., may refuse to employ, contract with or permit to reside at the day care center at any time the department, a school board or a day care provider determines the person has been convicted or adjudicated delinquent on or after his or her 12th birthday for a crime, act or offense otherwise not identified under sub. (1) or (2) which is substantially related to the care of a client.

3. As applicable, an agency or entity under subd. 1. or 2, shall consider protection of the client first, and may, where appropriate, apply under sub. (5) (b) a less stringent measure than a refusal under this paragraph.

(b) Substantially related criteria. In determining whether a crime, act or offense or delinquency adjudication is substantially related to the care of a client under par. (a), the agency or entity shall consider at minimum all of the following:

1. All of the following related to the job:
 - a. The nature and scope of the job's client contact.
 - b. The nature and scope of the job's discretionary authority and degree of independence in judgment relating to decisions or actions which affect the care of clients.
 - c. The opportunity the job presents for the commission of similar offenses.

d. The extent to which acceptable job performance requires the trust and confidence of clients and their parent or guardian.

e. The amount and type of supervision received in the job.

2. All of the following related to the offense:

a. Whether intent is an element of the offense.

b. Whether the elements or circumstances of the offense are substantially related to the job duties.

c. The pattern of offenses.

d. The extent to which the offense relates to vulnerable clients.

f. Whether the crime involves violence or threat or harm.

g. Whether the crime is of a sexual nature.

3. All of the following related to the individual:

a. The number and type of offenses for which the individual has been convicted.

b. The length of time between the conviction and the employment decision.

c. The individual's employment history, including references, if available.

d. The individual's participation in or completion of pertinent programs of a rehabilitative nature.

e. The individual's probation or parole status.

f. The individual's ability to perform or continue to perform the job consistent with the safe and efficient operation of the program and the confidence of the clients served including as applicable, their parents or guardians.

g. The age of the individual on the date of conviction.

Note: A person refused employment or who has had his or her employment terminated and believes he or she may have been discriminated against, may file an appeal under s. 111.335, Stats., with the Equal Rights Division, Department of Workforce Development.

(4) **REPORTING.** Each child-placing agency and county department shall provide the department with information about each person who is denied a license or adoption home study approval for a reason specified in s. HFS 12.10 (2).

Note: Send information on denial or revocation of a foster home license or denial of an adoptive home study application for a reason as specified in s. HFS 12.10 (2) to: Bureau of Regulation and Licensing, Division of Children and Families, P.O. Box 8916, 1 West Wilson St., Madison, WI 53708-8916.

(5) LESS SERIOUS CRIMES, ACTS OR OFFENSES REQUIRING SPECIAL PRECAUTIONARY MEASURES. (a) Less serious crimes, acts or offenses. 1. Less stringent measures other than a bar on regulatory approval by an agency or prohibiting the contracting for day care services under s. 120.13 (14), Stats., by a school board, or a bar on employment, nonclient residency or other similar type of association by an entity may be imposed where the person has been convicted of a less serious crime, act or offense, including but not limited to those crimes identified in the crimes list in appendix A attached to this chapter, which are substantially related to the care of a client.

2. In determining whether a person's crimes, acts or offenses are substantially related to the care of a client, an agency or entity shall apply the criteria under sub. (3) (b).

(b) Less stringent measures. 1. An agency shall impose special precautionary measures identified under subd. 2., on persons seeking regulatory approval or to provide contracted day care services under s. 120.13 (14), Stats., or by the entity on persons having contact with clients who are either employed by the entity or are nonclient residents or have any other similar type of association with the entity if that person has committed a less serious crime, act or offense as described under par. (a).

2. Precautionary measures may include but are not limited to any of the following:

a. For licensure, certification or other similar regulatory function, conditions as appropriate, imposed on the regulatory applicant or regulated entity as part of regulatory approval or continued approval such as: prohibitions on certain activities or functions, no repeat of crimes, acts or offenses, submission of necessary and relevant statements from therapists or counselors on the person being fit and qualified for regulatory function or job task where appropriate, prescribed limited contact or supervised contact with clients.

b. Closer supervision or special supervision arrangements such as partnering with another person who does not have background history problems.

c. Medication monitoring.

d. Prior evaluation and recommendations from an appropriate professional such as a psychiatrist or psychologist.

e. Restrictions to certain on-premises activities, locations or time periods.

- f. No transporting of clients.
- g. Periodic alcohol or drug testing.

HFS 12.12 REHABILITATION REVIEW. (1) ELIGIBILITY. (a) Request. A person barred under s. HFS 12.10 (2) for any of the following may request a rehabilitation review under par. (e) if he or she meets the applicable criteria under par. (b), (c) or (d) for requesting a review:

1. The person has committed a serious crime, act or offense identified by the department under s. HFS 12.11 (2) or s. 48.685 (5) (bm) 4., Stats., for which rehabilitation review is required and does not have a pending charge for any criminal or municipal ordinance charges including traffic other than parking or speeding.

2. A unit of government or a state agency or other similar authority has made a finding that the person has abused or neglected a client or misappropriated the property of a client.

3. A determination has been made under s. 48.981 (3) (c) 4., Stats., or other similar authority that the person has abused or neglected a child.

4. In the case of a position for which the person must be credentialed by the department of regulation and licensing or other similar authority, the person's credential is not current or is limited so as to restrict the person from providing adequate care to a client.

(b) Requester status criteria. A person under par. (a) may request a rehabilitation review if that person meets all of the following conditions or conditions under par. (c) or (d):

1. The person has not committed a serious crime, act or offense that prohibits rehabilitation under s. HFS 12.11 (1).

2. The person does not have a charge pending for a serious crime, act or offense under s. HFS 12.11 (1) and (2).

3. If the person is a foster home license applicant under s. 48.62, Stats., or an applicant for an adoption home study, the person has not committed a serious crime, act or offense under s. 48.685 (5) (bm) 4., or a similar serious crime, act or offense in another jurisdiction or the background check request is not received within 5 years of a crime committed under s. 48.685 (5) (bm) 4.

4. The person is not subject to a court order, injunction or temporary restraining order relating to the crime which is the basis for the review request.

5. The person is not a registered sex offender under s. 301.45, Stats., or under a similar authority.

6. The person is not currently serving a jail commitment or sentence including persons with work release privileges.

7. The person is not currently under the supervision of the department of corrections or other similar authority or on probation or parole.

8. The person has not requested a rehabilitation review until at least one year after the end of the period of the imposed incarceration, probation or parole.

9. The person has not requested a rehabilitation review for a similar type of regulatory approval or job function or activity within the last year.

Note: "Similar" in the previous paragraph means regulatory approval, job function or activity that could be categorized in a general way, such as: a review involving the question of direct client contact or that would involve a similar job function or activity that allows unsupervised client access or the review involved a family day care and now the applicant seeks a group day care license or the applicant sought a group home license and now seeks a child caring institution license.

(c) Eligibility criteria for existing entities, employes, contracted persons or persons residing at an entity. An agency need not bar and may continue the regulatory approval of an entity and an entity need not bar and may retain a person on staff or continue a contract for services with a person or permit a person to continue to reside at an entity beyond October 1, 1999, until a favorable rehabilitation review decision has been reached by the agency and all of the following are met:

1. The entity or person has submitted a completed rehabilitation review request form prior to October 1, 1999 to the agency that must review the rehabilitation request.

2. Except for par. (b) 7. and 8., the person shall show that he or she is otherwise eligible for rehabilitation review under par. (a).

3. The person shall have been operating the regulated or approved entity or been working for or under contract in the same capacity with the entity or residing at the entity prior to October 1, 1998.

4. If the person is awaiting rehabilitation review from an agency and the agency is unable to complete a rehabilitation review request for the person prior to October 1, 1999.

(d) Foster homes. An agency may allow a foster parent licensed under s. 48.62 or 48.75, Stats., to continue as a foster parent and may waive the foster parent's requirement to meet the criteria under par. (b) 6., 7., and 8., if that person is otherwise eligible for a rehabilitation review under par. (a), and all of the following conditions are met:

1. None of the children in foster home placement was a witness to or the victim of the underlying crime or act for which the foster parent was charged or convicted and is seeking a rehabilitation review.

2. The foster parent has submitted to the agency a completed rehabilitation review request form for agency rehabilitation review, and the agency is persuaded by clear and convincing information that not waiving the criteria under par. (b) 6., 7., and 8., would be contrary to the best interests of the children currently in foster home placement.

3. The agency has shown that the circumstances for waiver of the criteria under par. (b) 6., 7., and 8., do not pose any jeopardy to, and will not adversely impact the care of any foster child in placement and would not be contrary to the best interests of any foster child placed in the foster home.

4. The agency determined that continued licensure of the foster parent is appropriate and within 3 working days of this determination submitted to the department for its consideration and approval the information that forms the basis for this conclusion.

Note: Send agency approved determinations for Department review and approval to: Bureau of Program and Policies, Division of Children and Families, P.O. Box 8916, Madison, WI 53708-8916

5. The department, after reviewing the information under subd. 4., issued a written approval to the agency for continued licensure of the foster parent. If the department does not agree with the agency's findings and conclusions, the agency shall immediately request the foster parent to surrender the license or, as applicable and as necessary, shall deny or revoke the license of the foster parent.

Note: Send information on a denial or revocation (including voluntary surrender) of a foster home license or denial of an adoptive home study application for a reason specified in s. HFS 12.10 (2) to: Bureau of Regulation and Licensing, Division of Children and Families, P.O. Box 8916, 1 West Wilson St., Madison, WI 53708-8916.

(e) Rehabilitation request. 1. a. If the person is otherwise eligible, an agency shall provide information on eligibility criteria for a rehabilitation review to any person who is barred from regulatory approval under this chapter and to any non-client resident who is barred from residing at an entity. If the person is eligible to request a rehabilitation review, the agency shall provide to the person information on how to obtain the rehabilitation review request form.

b. If an entity wishes to employ a person or be able to contract for the person's services, but the person is barred under this chapter from being employed by or contracting with the entity, the entity shall provide information on eligibility criteria for a rehabilitation review to the person. If the person is eligible to request a rehabilitation review, the agency shall provide to the person information on how to obtain the rehabilitation review request form.

2. a. To initiate a rehabilitation review, an eligible person must obtain a rehabilitation review request form developed by the department and submit the completed form, including the requested supporting documents and information, to the agency which regulates the entity or, for day care providers under s. 120.13 (14), Stats., to the school board that contracts with a day care provider.

b. A person's submitted rehabilitation review request will not be reviewed unless and until all information requested on the form is provided.

(2) REVIEW PROCEDURES. (a) Processing rehabilitation review requests. Upon receipt of a person's completed rehabilitation review request, including supporting documentation and other requested information, the agency shall appoint a panel of at least 2 persons to review the information submitted.

(b) Rehabilitation request information review. 1. The agency rehabilitation request review panel shall review the rehabilitation review request form and accompanying documents. The panel may request additional information from the person or from other agencies or persons familiar with the person requesting the review.

2. The rehabilitation request review panel shall give the person an opportunity to appear before the review panel to answer any questions the review panel may have.

(c) Rehabilitation decision. Upon review of the information obtained, the agency review panel shall decide whether the information provided establishes by clear and convincing evidence that the person has demonstrated rehabilitation so that the bar to regulatory approval, employment, contracting or residency may be lifted and the person may be eligible for the position indicated in the rehabilitation review request form. The panel shall consider at least the following factors, as applicable:

1. Favorable personal reference checks and favorable comments from other persons and agencies identified in the written request.

2. Proof of successful completion of parole, probation, incarceration or work release privileges.

3. Proof that the person has not had subsequent contacts with law enforcement leading to probable cause and arrest or other regulatory enforcement agencies.

4. No information to indicate that the person has any pending or existing arrest warrants or civil judgements or other legal enforcement actions.

5. Aggravating or mitigating circumstances surrounding the crime, act or offense.

6. Evidence of rehabilitation, including public or community service, volunteer work, recognition by other public or private authorities for accomplishments or efforts.

7. Statements from therapists, counselors and other professionals.
8. Attempts or efforts at restitution.
9. Victim's impact statement, if appropriate.
10. Employment history, including demonstrated ability to develop positive social interaction and increased independence or autonomy of daily living.

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

b. The review panel's decision shall be in writing and sent to the requester with a copy provided to the entity, as applicable.

2. If the agency finds sufficient evidence to support rehabilitation approval, the decision shall indicate, as applicable, whether the person is eligible for regulatory approval, employment, contracting or residency at an entity. The decision shall describe the scope of the rehabilitation approval with any conditions or limitations that may be prescribed, that is, whether the approval is only for certain job functions, activities or arrangements and for what type of entity or, if a regulatory approval, for what type of entity, and any conditions or limitations that may be prescribed for regulatory approval.

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

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

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

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

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

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

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

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

2. The appellant shall bear the burden of proving by a preponderance of the evidence that the department abused its discretion in deciding that the person did not show sufficient evidence to support rehabilitation approval.

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

(3) **REHABILITATION APPROVAL COMPLIANCE.** (a) Approval status. A person under sub. (1) (a) who has had his or her rehabilitation review request approved under sub. (2) (d), and subsequently was, as applicable, given regulatory approval or approval to be employed at or to contract with or reside at an entity, shall comply with all conditions and limitations as may be imposed with that approval. A person who has received rehabilitation approval and fails to comply with the conditions for rehabilitation approval or who subsequently commits a crime, act or offense that is cause for a bar under s. HFS 12.10 (2) shall, as provided under par. (b), have his or her rehabilitation approval withdrawn by the approving agency.

(b) Violation of rehabilitation approval. An entity or agency aware of any person who has violated his or her rehabilitation approval for a reason under par. (a) shall inform the agency that approved the person's rehabilitation. The applicable approving

agency or the department may immediately temporarily deny or rescind a rehabilitation approval of a person when the agency has knowledge that the person has done any of the following:

1. The person fails to comply with or abide by the conditions or limitations of an approval granted under sub. (2) (d).

2. The person is no longer eligible for regulatory approval or employment at, contracting with or residency at an entity under s. HFS 12.10 (2).

3. The person knowingly submitted false information or withheld pertinent information relevant to the rehabilitation request that otherwise would or could have affected the review panel's decision under sub. (2) (d) to approve the person's rehabilitation.

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

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

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

(d) Appeal rights. Any person who has had his or her rehabilitation approval withdrawn under par. (b) 1. or 3. may file an appeal of this decision as provided under sub. (2) (d) 3.

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

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

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

(4) SCOPE OF AGENCY REHABILITATION APPROVAL. (a) Approval limit: An agency may only grant rehabilitation approval within the scope of its regulatory authority and within the scope of client access or the job activity or function specified in the rehabilitation review request. An approval is not transferable outside the scope of the agency's regulatory authority or to other job functions or activities different from those specified in the rehabilitation approval by that agency.

Note: Examples of the above may include but are not limited to: An approval to be a foster parent by one county is not, unless approved by the other county, transferable to the other county, or an approval by the Department for a person to work as a shipping clerk in a hospital or nursing home would not be transferable to the function or activity of patient care unless a rehabilitation review approval specifically for patient care would be completed and approved by the regulatory agency subunit of the department responsible for review of rehabilitation requests for hospitals and nursing homes. A rehabilitation approval for employment at a childrens day care is not transferable to a child caring institution or to a hospital or nursing home.

(b) Approval transfer conditions. A rehabilitation review approval is transferable, without obtaining another rehabilitation review approval, under the following conditions:

1. The person's job title, function, duties and circumstances approved in the rehabilitation approval are the same or similar when moving from one entity to another of the same type and the receiving entity has determined that they do not pose a risk to clients.

2. A rehabilitation review application request approval regarding regulatory approval by an agency is transferable to another agency only with the approval of the receiving agency. If the regulatory agency is the department, it shall be the receiving regulatory subunit of the department that will decide whether a rehabilitation approval is transferable to that regulatory subunit.

(c) Applicant request to transfer rehabilitation approval. 1. Upon notification on the department's background information form that a regulatory, job or contract applicant or prospective nonclient resident has had a rehabilitation review under sub. (2) (d), an agency or entity shall request from the rehabilitation review agency a copy of the rehabilitation decision. If an approval, the agency or entity shall determine whether the approval is acceptable as applicable for the regulatory approval, job functions or activities for which the applicant is now applying or for purposes of nonclient residency at the entity.

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

3. If a denial, the agency or entity shall determine whether as applicable the regulatory, job or contract applicant or prospective nonclient resident is eligible to seek another rehabilitation review as prescribed under sub. (1) (a), and shall so inform the applicant or nonclient resident.

SUBCHAPTER III - BACKGROUND INFORMATION COLLECTION

HFS 12.20 BACKGROUND INFORMATION GATHERING AND SCREENING

(1) BACKGROUND INFORMATION FORM. (a) Agency responsibilities. 1. The department shall require any person who applies for regulatory approval to operate or continue the operation of an entity to complete the department's background information form provided by the department.

2. A county department or child placing agency shall require a person who applies for issuance or renewal of a license to operate a foster home or treatment foster home under s. 48.62 or 48.75, Stats., or who seeks adoption home study approval to complete the department's background information form provided by the county department or child-placing agency.

3. A school board shall require any person who proposes to contract with the school board under s. 120.13 (14), Stats., or to renew a contract under that subsection, to complete the department's background information form provided by the school board.

Note: For copies of DHFS - 64 either download a copy from the Department's internet website at: www.dhfs.state.wi.us, then click on "News and Initiatives" or, you may request a master copy, for purposes of reproduction, of the DHFS - 64 form from the agency which regulates your entity.

(b) Entity responsibilities. Each entity shall have on file, except for subd. 2. as provided under sub. (2) (b) 1., a completed background information form and on file and an updated one every 4 years for the following:

1. Except as provided under sub. (2) (b) 1. and 4., for persons under age 18 in day care program licensed under s. 48.65, Stats., a person who is an employe, prospective employe, contractor or prospective contractor of the entity, who will be under the entity's control and who has, or is expected to have, access to the entity's clients. This does not include persons with whom the entity contracts or whom the entity employs to perform infrequent or sporadic services, including maintenance services and other services not directly related to the care of a client.

2. A person who is a nonclient resident or prospective at the entity, if the person has, or is expected to have, access to any client of the entity.

(c) Penalties for false information or failure to report. 1. Any person who knowingly and intentionally provides false information or omits information on the department's background information form under pars. (a) or (b) or who subsequently fails to report any information about a pending charge or conviction for a crime or other act or offense requested on the background information form as required under subd. 2., may be required to forfeit not more than \$1,000 and may as appropriate be subject to additional sanctions as determined by the agency, including one or more of the following:

- a. Denial or revocation of regulatory approval or approval or termination of contract by an agency.
- b. Denial of employment or contractual consideration by an entity.
- c. Termination of employment or contractual relationship by an entity.
- d. Special regulatory conditions or limitations placed upon the person by an agency, including restriction to off premises location during regulated business hours or restricted access to client conditions.
- e. Human services professional assessment of a person being fit and qualified before allowing the person to be on the premises.

2. A person under par. (a) shall report to the regulatory approving agency and under par. (b) to the entity by the next working day, information on any pending charge or conviction for a crime or other act or offense requested on the background information form.

3. a. An entity shall, as soon as possible, report to the agency which gave regulatory approval or approval or to the school board which the day care entity contracts with under s. 120.13 (14), Stats., when a signatory or other legal party to the entity application for regulatory approval or approval or under which a contract under s. 120.13 (14), Stats., is signed or who is a nonclient who resides at the entity has been charged with or has committed a crime, act or offense under s. HFS 12.10 (2).

b. An entity shall, as soon as possible, report to the agency which gave regulatory approval or approval or to the school board which the day care entity contracts with under s. 120.13 (14), Stats., when a new nonclient resides or is expected to reside at the entity.

4. An entity shall include in its personnel or operational policies a provision that requires employed staff or contracted persons or persons residing at an entity to notify the entity as soon as possible when the person has been charged with or has committed any crime, act or offense specified under s. HFS 12.10 (2).

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

2. a. If upon review of a person's completed background information form and any other information that may be available, an entity finds that none of the items under s. HFS 12.10 (2) apply, the person has not committed a crime, act or offense identified under s. HFS 12.11 (1) and (2) or as otherwise may be applied under sub. (3), an entity

may employ or contract with a person, or a child-placing agency as provided for under subpar. d., may license a person as a foster home or treatment foster home provider or make a preadoptive placement of a child for not more than 60 days pending receipt and review of the information required under s. HFS 12.21 (1) (b) 1. a., and as applicable, information obtained either by the department or a school board for a day care program under s. HFS 12.21 (1) (a) 3. in order to determine compliance with s. HFS 12.10 (2) and s. HFS 12.11 (1) and (2) and, as may apply, under s. HFS 12.11 (3).

b. If the background information form completed by a person under sub. (1) (b) indicates that the person as a nonclient resident is not ineligible to be permitted to reside at an entity for a reason specified in ss. HFS 12.10 (2) and HFS 12.11 (1) and (2) or as otherwise may apply under HFS 12.11 (3), and if an entity otherwise has no reason to believe that the person is ineligible to be permitted to reside as a nonclient resident at an entity, the entity may permit the person to reside at the entity for not more than 60 days pending receipt of the information required under s. HFS 12.21 (1) (a) 1. in order to determine compliance with s. HFS 12.10 (2) and s. HFS 12.11 (1) and (2) and as may apply under s. HFS 12.11 (3).

c. Pending receipt and review on the information as provided in this subd. 2. a. and b., an entity shall provide supervision for a person who is employed, contracted with or who is not a client and is permitted to reside at an entity. Supervision shall include at minimum periodic direct observation of the person.

d. The department, a county department or a child placing agency may license a foster home or treatment foster home under s. 48.62 or 48.75, Stats., or approve an adoption home study, and a school board may contract with a person under s. 120.13 (14), Stats., conditioned on the receipt of the information specified in s. HFS 12.21 in order to determine that the person is not ineligible to be licensed, approved or contracted with for a reason specified under s. HFS 12.10 (2).

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

Note: For the Department and for county departments and child placing agencies that license foster or treatment foster homes under s. 48.62 and 48.75, Stats., or that approve adoptive parent applicant home studies, this may mean delaying issuance of a license or an adoption approval or placing conditions on a license or adoption approval as provided under s. HFS 12.11 (5) (b).

(b) Filing of background information form. 1. The entity shall send the signed background information form to the department for persons specified under sub. (1) (a) who are regulated by the department, persons specified under sub. (1) (b) 2., who are nonclient residents or prospective nonclient residents of an entity that is regulated by the department and persons who are under 18 years of age, but not under 12 years of age, and who are employes, prospective employes, contractors, or prospective contractors of a day care center that is licensed under s. 48.65, Stats., and other persons as the department may identify.

2. The entity shall send the background information form to the county department for persons specified under sub. (1) (a) who are licensed or adoptive parent applicants studied by a county department, persons specified under sub. (1) (b) 2. who are nonclient residents or prospective nonclient residents of an entity that is licensed or in a home studied for adoptive parent applicant approval by the county department, and other persons as the department may identify.

3. The entity shall send the background information form to the child-placing agency for persons specified under sub. (1) (a) who are licensed by a licensed child-placing agency or who are adoptive parent applicants studied, persons specified under sub. (1) (b) 2., who are nonclient residents or prospective nonclient residents of an entity that is licensed by a licensed child placing agency or in a home studied for adoptive parent applicant approval, and other persons as the department may identify.

4. The entity shall send the background information form to the school board for persons specified under sub. (1) (a) who are contracted by a school board, persons specified under sub. (1) (b) 2. who are nonclient residents or prospective nonclient residents of an entity that is contracted by a school board, or persons who are under 18 years of age, but not under 12 years of age, and who are employes, prospective employes, contractors, or prospective contractors of a day care center that is licensed under s. 48.65, Stats., that is contracted for under s. 120.13 (14), Stats., and other persons as the department may identify.

5. The entity shall maintain the background information forms for persons identified under sub. (1) (b) 1. on file for inspection by the agency.

(c) Confidentiality. Agencies and entities shall maintain on file all completed department background information forms required under this section and shall comply with applicable federal and state confidentiality laws.

HFS 12.21 CRIMINAL AND OTHER BACKGROUND HISTORY INFORMATION SEARCH. (1) INFORMATION GATHERING. (a) Agency responsibilities.

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

a. A criminal history search from the records maintained by the department of justice and as applicable, where indicated and as may be available, a record search from the records maintained by a native American tribal court.

b. Information contained in the registry under s. 146.40 (4g), Stats., and ch. HFS 13 regarding any findings against the person.

c. Information maintained by the department of regulation and licensing regarding the status of the person's credentials, as applicable.

d. Information maintained by the department regarding any substantiated reports of child abuse or neglect against the person, if available.

e. Information maintained by the department under ss. 48.685 (2) (am) 5., 48.651 (2m), 48.75 (1m), 50.065 (2) (am) 5., Stats., and under s. 120.13 (14), Stats., regarding any denial to the person of a license, continuation or renewal of a license, certification or a contract, or approval to operate an entity for a reason specified in s. HFS 12.10 (2), along with any conditions imposed as applicable given for any regulatory approval and regarding any denial to the person of employment at , a contract with or permission to reside at an entity for a reason specified in s. HFS 12.10 (2).

2. If the information obtained under subd. 1.e. indicates that the person has been denied a license, continuation or renewal of a license, certification, a contract, employment or permission to reside as described in subd. 1.e., the department, a county department, a child-placing agency or a school board need not obtain the information specified in subd. 1. a. to d.

3. The department or a school board, as applicable, shall obtain the information specified under subd. 1. with respect to a person specified under par. (a) (intro.) who is under 18 years of age but not under 12 years of age and who is an employe, prospective employe, contractor, prospective contractor or who is otherwise a nonclient resident or prospective nonclient resident of a day care center that is licensed under s. 48.65, Stats., or contracted for under s. 120.13 (14), Stats.

(b) Entity responsibilities. 1. a. Subject to par. (a) 2. and 3. with respect to persons 18 years of age or older in a day care program, every entity shall obtain all of the information under par. (a) 1. with respect to a person specified under s. HFS 12.10 (1) (b) who is an employe, prospective employe, contractor or prospective contractor of the entity and who is expected to have access to the entity's clients.

b. Paragraph (a).1., does not apply with respect to a person with whom the entity contracts or whom the entity employs to perform infrequent or sporadic services, including maintenance services and other services that are not directly related to the care or treatment of a client.

2. a. If an entity takes an action specified in s. HFS 12.10 (1) (b) with respect to an employe, prospective employe, contractor or prospective contractor for whom, within the last 4 years, the information required under par. (a) 1. a. to c. and e. has been obtained either by another entity or by a temporary employment agency, the entity may obtain the information required under par. (a) 1. a. to c. and e. from that other entity or temporary employment agency, which shall provide the information if possible, to the entity. Information under par (a) 1. d. shall be obtained from the source specified in par. (a) 1. d.

b. If an entity cannot obtain the information required under par. (a) 1. a. to c. and e. from another entity or from a temporary employment agency or if an entity has reasonable grounds to believe that any information obtained from another entity or from a temporary employment agency is no longer accurate, the entity shall obtain that information from the sources specified in par. (a) 1. a. to c. and e. and from the source specified in par. (a) 1. d.

(c) Person under age 18. 1. Notwithstanding par. (a) 1. and (b) 1. a., an agency is not required to obtain the information specified under par. (a) 1. and an entity is not required to obtain the information specified in par. (b) 1. a., for a person under 18 years of age whose background information form under s. HFS 12.20 (1) (b) indicates that the person is not ineligible to be employed, contracted with or permitted to reside at an entity for a reason specified in s. HFS 12.10 (2), and for whom the department, county department, child placing agency, school board or an entity otherwise has no reason to believe the person is ineligible to be employed, contracted with or permitted to reside at an entity.

2. Subdivision. 1. does not apply with respect to a person under 18 years of age, but not under 12 years of age who is an employe, prospective employe, contractor, prospective contractor, nonclient resident or prospective nonclient resident of a day care center that is licensed under s. 48.65, Stats., or contracted for under s. 120.13 (14), Stats., and for whom the department or school board is required under par. (a) (intro.) to obtain the information specified in par. (a) 1. and 3.

3. Subdivision. 1., does not preclude an agency from obtaining at its discretion, the information specified in par. (a) 1. with respect to a person described under this paragraph who is a nonclient resident or a prospective nonclient resident of an entity.

(d) Out-of-state records search. If a person who is the subject of a search under par. (a) 1. or par. (b) 1. a. is not a resident of this state, or if at any time within the last 3 years preceding the date of the search that person has not been a resident of this state, the agency or entity shall make a good faith effort to obtain from the state in which the person is or was a resident within the past 3 years preceding the date of the search information that is equivalent to the criminal history information specified in par. (a) 1. a.

(e) Armed forces records search. If a person who is the subject of a search under par. (a) 1. or par. (b) 1. a. was in a branch of the U.S. armed forces, including any reserve component, within the last 3 years, the agency or entity shall make a good faith effort to obtain the discharge status of that person, either from the discharge papers issued to the person or from the armed forces branch in which the person served. If the discharge status is dishonorable or a general discharge, information on the nature and circumstances of the discharge shall be obtained.

(2) **INITIATING BACKGROUND INFORMATION SEARCHES.** (a) Agency responsibilities. 1. At least every 4 years, an agency shall request the information specified in sub. (1) (a) 1. for all persons who are regulated or approved to operate an entity and for all persons specified in s. HFS 12.10 (1) (b) who are nonclient residents at an entity and the department and school board shall request the information specified in sub. (1) (a) 1. for all persons under 18 years of age, but not under 12 years of age, who are employes or contractors, or are nonclient residents of a day care center licensed under s. 48.65, Stats., or a day care program contracted for under s. 120.13 (14), Stats.

2. a. Except as provided in subpar. b., an agency may charge an entity a fee for obtaining the information required under subd. 1. The fee may not exceed the reasonable cost of obtaining the information.

b. No fee may be charged to a nurse's assistant, as defined in s. 146.40 (1) (d), Stats., for obtaining or maintaining information if to do so would be inconsistent with federal law.

(b) Entity responsibility. At least every 4 years or at any time within that time period that an entity considers appropriate, the entity shall request the information specified in sub. (1) (a) 1. for all persons specified in s. HFS 12.10 (1) (b), who are employes or contractors of the entity and who have access to clients of the entity, other than for persons under 18 years of age, but not under 12 years of age, who are employes or contractors, or otherwise are nonclient residents of a day care center that is licensed under s. 48.65, Stats., or a day care program contracted for under s. 120.13 (14), Stats.

(c) Notwithstanding subs. (1) (b) 1. a. and (2) (b), if an agency has obtained the information required under sub. (1) (a) 1. or (2) (a) with respect to a person specified in sub. (1) (a) 1., and that person is also an employe, contractor or nonclient resident of an entity, the entity is not required to obtain the information specified in sub. (1) (b) 1. a. or (2) (b) with respect to that person.

(3) **CRIMINAL BACKGROUND AND OTHER INFORMATION FILING.** Agencies and entities shall maintain on file the most recent information under sub. (1) (a) 1. gathered as required under this section and shall comply with applicable federal and state confidentiality laws.

(4) **PENALTIES FOR VIOLATIONS.** An entity that violates any provision of this section, s. HFS 12.10 (2) (b) or s. HFS 12.20 (2) (a) 2. a. to c., may be required to forfeit not more than \$1,000. and may be subject to additional sanctions including:

(a) Submittal by the entity of a written corrective action plan specifying corrections to identified personnel screening practice deficiencies and implementation of the plan.

(b) As applicable, a department, county department or school board imposed corrective action plan specifying corrections to personnel screening practice deficiencies identified.

(c) At entity expense, attendance at department, county department or school board designated personnel screening training or other appropriate training.

(d) Specific conditions or limitations placed on a department, county department or child placing agency issued license, certification or registration or on a school board -issued contract.

(e) Issuance of department orders, sanctions or penalties on any department licensed, certified or registered entity, as described under s. 48.715, Stats., or as otherwise provided under ch. 50, Stats.

(f) Utilization by the entity, at entity expense, of a temporary employment agency for screening and hiring personnel.

(g) Denial, revocation or suspension of license, certification, registration or other approval issued by the department, a county department or a child-placing agency.

(h) Denial, nonrenewal or termination by a school board of a contract with a day care provider under s. 120.13 (14), Stats.

APPENDIX A

CRIMES LIST

PERMANENT BAR CRIMES

(See s. HFS 12.11 (1))

Note: This list reflects Wisconsin's crimes current as of 9/16/98. Also, remember that the substantial relatedness test must be applied for crimes not listed here under which a person was convicted to determine whether the nature of the act or offense has applicability in considering eligibility for regulatory approval, employment, contracting or nonclient residency with an entity. Additionally, you must determine whether the nature of the act or offense for a crime under which a person is convicted is comparable to a crime listed and if so, apply the sanction associated with that crime even though the crime under which the person is convicted may be a lesser crime.

I. SERIOUS CRIMES BY STATUTE NUMBER FOR WHICH CONVICTION MEANS THAT THE PERSON IS PERMANENTLY BARRED, FOR ALL PROGRAMS, FROM BEING THE OPERATOR OF AN ENTITY OR A CAREGIVER OR A NONCLIENT RESIDENT AT AN ENTITY. ALL ARE FELONY CONVICTIONS.

940.01	940.305	946.43	948.055
940.05	940.31	946.74	948.06
940.11	940.32	946.80-946.88	948.07
940.21	941.32	948.02(1)	948.08
940.22(2)	941.325	948.02(2)*	948.095
940.225(1)	941.327	948.02(3)	948.11
940.225(2)	943.02	948.025	948.12
940.225(3)	943.23(1g)(1m)(1r)	948.03(2)	948.13
940.285	943.32(2)	948.03(4)	948.21
940.29	944.205	948.04	948.30
940.295	946.01	948.05	948.35
			948.36

*If person at time of assault was more than 4 years older than the child.

II. ADDITIONAL SERIOUS CRIMES BY STATUTE NUMBER FOR WHICH CONVICTION MEANS THAT THE PERSON IS PERMANENTLY BARRED, ONLY FOR FOSTER CARE PROGRAMS, INCLUDING UNINCORPORATED FAMILY OPERATED GROUP HOMES LICENSED UNDER s. 48.625, STATS., OR ADOPTION HOME APPROVAL, FROM BEING THE OPERATOR OF AN ENTITY OR A CAREGIVER OR A NONCLIENT RESIDENT AT AN ENTITY. ALL ARE FELONY CONVICTIONS.

940.02	940.20(1m)-	948.20
940.03	spouse	948.22
940.06	940.22(2)	948.23
940.08	940.23	948.24
940.19(2)-(6) -	941.20(2)(3)	948.31
spouse	941.21	948.40
940.20(1)-spouse	943.10(2)	948.51
	948.03	

948.60	948.62
948.605(3)	and all other ch.
948.61	948 felonies

REHABILITATION REVIEW ELIGIBLE CRIMES

(See s. HFS 12.11 (2))

III. SERIOUS CRIMES BY STATUTE NUMBER FOR WHICH CONVICTION MEANS THAT THE PERSON IS BARRED, FOR ALL PROGRAMS, FROM BEING THE OPERATOR OF AN ENTITY OR A CAREGIVER OR A NONCLIENT RESIDENT AT AN ENTITY UNLESS HE OR SHE CAN DEMONSTRATE REHABILITATION. ALL ARE FELONY CONVICTIONS UNLESS STATUTE NUMBER IS FOLLOWED BY "M" FOR MISDEMEANOR.

49.49			
346.63	940.295 F or M	943.10(2)	948.11M
346.67 F or M	940.30	943.12	948.20
940.02	940.32 M	943.201	948.21M
940.03	940.43 F or M	943.23	948.23
940.04	940.45 F or M	943.30	948.24
940.06	941.12	943.31	948.40
940.07	941.20(1)M	943.32(1)	948.51
940.08	941.20(2)	944.17M	948.55M
940.09	941.20(3)	944.20M	948.60
940.12	941.235M	944.21 F or M	948.605(3)
940.13	941.26	944.23M	948.61
940.15	941.28	944.30M	951.02 F or M
940.16	941.29	944.32	961 -
940.19(1)M	941.296	944.33 F or M	manufacture.
940.19(2)-(6)*	941.298	944.34	possession or
940.195 F or M	940.30	946.415	delivery of
940.20*	941.31	946.42	controlled
940.201	941.38(2)	946.44	substance*
940.203*	941.38(3)M	946.47	961.38M
940.205*	941.915 F or M	946.70	961.42M
940.207*	942.08M	946.74M	961.43*
940.22(3)	943.03	947.013 F or M	961.465*
940.23	943.04	947.015	961.46*
940.25	943.06	948.03(3)	961.46M
940.285 F or M	943.01(2)(c)	948.09M	961.465M
940.291M	943.10(1)	948.10M	961.49*
			961.455*
			961.492*
			961.575M

* For foster care program including unincorporated family operated group homes licensed under s. 48.625. Stats., or adoption home study review, person must wait to apply for rehab review 5 years from date of crime.

LESS SERIOUS CRIMES

(See s. HFS 12.11 (5))

IV. CRIMES BY STATUTE NUMBER FOR WHICH CONVICTION MEANS THAT LESSER SANCTIONS UNDER S. HFS 12.11(5) APPLY FOR ALL PROGRAMS. ALL ARE MISDEMEANOR CONVICTIONS.

943.01(1)	943.50(4)(a)
943.20(3)(a)	

The rules contained in this order shall take effect as emergency rules on October 1, 1998.

WISCONSIN DEPARTMENT OF HEALTH
AND FAMILY SERVICES

DATE: September 28, 1998

By:  John Kiesow S.A. Joe
Joe Leean
Secretary

SEAL:

FISCAL ESTIMATE

DOA-2048 N(R10/96)

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

Subject

CAREGIVER BACKGROUND CHECKS

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

Increase Costs - May be possible to Absorb Within Agency's Budget Yes No

Decrease Costs

LOCAL: No local government costs

1. Increase Costs
 Permissive Mandatory
2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others _____
 School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

This order repeats the requirements in ss. 48.685 and 50.065, Stats., as created by 1997 Wisconsin Act 27 and amended by 1997 Wisconsin Act 237, and adds the necessary implementing rules, for background checks conducted in a uniform manner on all persons who apply to the Department for or have received from the Department a license, certification, registration or certificate of approval to operate a facility, service organization or program that provides care or treatment to people needing it, or who propose to reside at a regulated facility. Background checks are also to be carried out in the same uniform manner by county social services and human services departments and licensed child-placing agencies on applicants for a foster home license or an adoption home study and persons who have received a foster home license from the county department or child-placing agency. Finally, background checks are to be carried out in the same uniform manner by the regulated facilities, service organizations and programs, called "entities," on all persons before hiring them or contracting with them to provide care to clients or otherwise have regular contact with clients, and periodically on all persons employed by or under contract who provide care to clients or otherwise have regular contact with them.

Checking the background of a person who proposes to be or is the operator of a regulated entity, a resident at an entity, an employe of an entity or a person under contract to an entity to provide services to clients or to be in regular contact with clients involves having that person fill out a Department-prescribed background information form, reviewing that form, and checking at least five sources, including criminal history records and the Department's Caregiver Misconduct Registry under ch. HFS 13, to find out if the applicant, employe, person under contract or nonclient resident has been convicted of a serious crime, has a pending charge against him or her for a serious crime, is the subject of a finding that the person has abused or neglected a client or misappropriated a client's property, has been determined to have abused or neglected a child or has a professional credential that is not current or is so limited that it prevents the person from providing adequate client care.

Agencies are prohibited from giving regulatory approval to a person or permitting a nonclient to reside at an entity if the applicant, operator or resident has been convicted of or charged with a serious crime, has been found to have abused or neglected a client or child or misappropriated a client's property or does not

Long-Range Fiscal Implications

Agency/Prepared by: (Name & Phone No.)

H&FS/Don Dorn, 266-0415

Authorized Signature/Telephone No.

Richard W. Lorang
Richard W. Lorang, 266-9622

Date

9-30-98

CONTINUATION OF FISCAL ESTIMATE FOR CH. HFS 12

have the proper professional credential, and entities are prohibited from hiring or contracting with persons, or retaining them, for the same reasons. However, for specified crimes and other acts and offenses, which would otherwise bar a person from regulatory approval, residence or employment, a person is permitted to ask an agency for a waiver of the bar based on evidence of rehabilitation.

The Department (and county departments and some school boards) will experience a significant workload in conducting background checks on providers and reviewing requests for waivers of employment, license or residence bars. However, this workload is the result of the requirements included in Acts 27 and 237. Therefore, this order by itself does not affect the expenditures or revenues of state government or local governments.



Tommy G. Thompson
Governor

Joe Leean
Secretary



State of Wisconsin

Department of Health and Family Services

OFFICE OF LEGAL COUNSEL

1 WEST WILSON STREET
P.O. BOX 7850
MADISON WI 53707-7850

TELEPHONE: (608) 266-8428

December 11, 1998

✓ The Honorable Robert Welch, Co-Chairperson
Joint Committee for Review of Administrative Rules
Room 201, One East Main
Madison, Wisconsin

The Honorable Glenn Grothman, Co-Chairperson
Joint Committee for Review of Administrative Rules
Room 125 West, State Capitol
Madison, Wisconsin

Dear Senator Welch and Representative Grothman:

This is notification that tomorrow the Department will publish an emergency rulemaking order to amend the ch. HFS 12 emergency rules published October 1, 1998, for implementation of the caregiver background check requirements in ss. 48.685 and 50.065, Stats., as created by 1997 Wisconsin Act 27 and amended by 1997 Wisconsin Act 237. The amendments are to the Crimes List published as Appendix A to ch. HFS 12 and to s. HFS 12.11 (5) (a) which is affected by changes made in the Crimes List. A copy of the emergency order is attached to this letter.

The Department has determined that there is need to modify the Crimes List. It needs to be corrected and clarified in places, and made easier to use. But more than that, there is need to move convictions for some crimes from one category to another, especially from permanent bar status to bar with rehabilitation status. Once the Crimes List as published on October 1 began to be used by regulatory agencies, employers and contractors to make licensing and hiring decisions, it became apparent that some categorizations in the original list were unreasonable.

The Department is modifying ch. HFS 12 by emergency order because of the critical importance of the appended Crimes List for proper implementation of the new statutory background check requirements.

If you have any questions about these amendments to the ch. HFS 12 emergency rules, you may contact Linda Dawson of the Department's Office of Legal Counsel at 266-0355.

Sincerely,

Paul E. Menge

Paul E. Menge
Administrative Rules Manager

Attachment

cc Senator-elect Judy Robson

ORDER OF THE
DEPARTMENT OF HEALTH AND FAMILY SERVICES
REPEALING AND RECREATING RULES

FINDING OF EMERGENCY

The Department of Health and Family Services finds that an emergency exists and that the rules included in this order are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

The Department on October 1, 1998 published an emergency rulemaking order creating ch. HFS 12, relating to uniform procedures for checking the backgrounds of persons who apply to provide or are providing care or treatment to persons who need that care or treatment, and for barring persons because of specified convictions, findings or charges substantially related to the care of clients from operating a service provider organization, providing care or treatment to the clients of a service provider or otherwise having contact with the clients of a service provider. Chapter HFS 12 includes an appendix which consists of a list of crimes. Some of the listed crimes **permanently bar** a person who was ever convicted of the crime from receiving regulatory approval from the Department to provide care or treatment to vulnerable people; from being licensed by a county human service or social service department or by a private child-placing agency to operate a foster home for children; from contracting with a school board to provide a day care program; from being employed by or under contract to a service provider to provide care or treatment to the service provider's clients; and from residing as a nonclient at the service-providing entity. Others of the listed crimes **temporarily bar** a person convicted of the crime from doing any of those things, pending demonstration that the individual has been rehabilitated. While the remaining few crimes in the Crimes List, called "less serious crimes," do not bar a person with a conviction from providing care or treatment to others, they do require the regulatory agency or employer to impose **special precautionary measures** to ensure the protection of persons receiving care or treatment.

This order modifies the Crimes List published on October 1, 1998 as Appendix A to ch. HFS 12.

The original Crimes List consists of 159 crimes listed by statute number, 45 of which are permanent bar crimes for all programs. Some 105 crimes are rehabilitation review-eligible crimes (bar with rehab crimes), and 3 are less serious crimes (crimes of lesser significance than serious crimes). As for unlisted crimes, a regulatory agency, employer or contractor is supposed to consider whether conviction for any unlisted crime is substantially related to caregiving and, if so, can treat it as a permanent bar crime or a crime of lesser significance, and take action accordingly.

The modified Crimes List consists of 156 crimes listed by statute number, name and program sanction, 26 of which are permanent bar crimes for all programs. Some crimes have been moved from permanent bar status to bar with rehab status, crimes of lesser significance status or substantially related (unlisted) status, and some crimes have been moved from bar with rehab status to crimes of lesser significance status or substantially related (unlisted) status. The crimes of lesser significance are removed altogether from the Crimes List and made a separate list under s. HFS 12.11 (5) (a) 3., so that the Crimes List is left with only "serious crimes."

The Department is modifying the Crimes List at this time because after publication of the original list, that is, as the Crimes List began to be used to make decisions about licensing or certifying service providers and hiring or contracting for caregiver staff, and especially in anticipation of agencies having to withdraw some current licenses and certifications and entities having to dismiss some current caregiver staff and terminate some caregiver contracts, Department staff heard from and met with many affected individuals and representatives of affected programs and discussed with them the need, reasonableness and practicality of categorizing some criminal convictions in ways they had been categorized. These discussions led the Department to reconsider the appropriateness of the sanctions for some of the specified crimes, in particular some of the crimes that the Department had designated permanent bar crimes. The Department also determined once the Crimes List began to be used that corrections and clarifications were needed in it.

The Department is modifying the ch. HFS 12 emergency rules by emergency order because of the critical importance of the appended Crimes List for proper implementation of the statutory caregiver background check requirements. Those requirements are directed at protecting people receiving care and treatment from being harmed. The revised Crimes List is part of the proposed permanent rules that will replace the emergency rules, but the replacement permanent rules will not take effect until about June 1, 1999.

ORDER

Pursuant to authority vested in the Department of Health and Family Services by ss. 48.685 (5) and (7) (a) and 50.065 (5) and (7) (a), Stats., as created by 1997 Wisconsin Act 27 and amended by 1997 Wisconsin Act 237, and s. 227.11 (2), Stats., the Department of Health and Family Services hereby creates rules interpreting ss. 48.685 and 50.065, Stats., as created by 1997 Wisconsin Act 27 and amended by 1997 Wisconsin Act 237, and s. 120.13 (14), Stats., as amended by 1997 Wisconsin Act 27, as follows:

SECTION 1. HFS 12.11 (5) (title) and (a), as created by emergency order effective October 1, 1998, are repealed and recreated to read:

HFS 12.11 (5) (title) CRIMES OF LESSER SIGNIFICANCE REQUIRING SPECIAL PRECAUTIONARY MEASURES. (a) Crimes of lesser significance. 1. An agency or entity shall impose, where warranted, less stringent measures than a bar on regulatory approval by an agency, a bar on entering into a contract for a day care program by a school board under s. 120.13 (14), Stats., or a bar of a person by an entity from employment by or contracting with an entity or permitting residency as a nonclient at an entity, if the person has been convicted of a crime of lesser significance than a serious crime and that is substantially related to the care of clients.

2. In determining whether conviction for a crime of lesser significance than a serious crime is substantially related to the care of clients, an agency or entity shall apply the criteria under sub. (3) (b).

3. Crimes of lesser significance include the following:

- a. Section 940.19 (1) - Battery to other than spouse, misdemeanor only.
- b. Section 943.01 (1) - Damage to property, misdemeanor only.
- c. Section 943.20 (3) (a) - Theft where value of property does not exceed \$1000.
- d. Section 943.50 (4) (a) - Retail theft where value of property does not exceed \$1000.
- e. Section 947.013 - Harassment, misdemeanor only.
- f. Section 951.02 - Mistreating animals, misdemeanor only.

SECTION 2. Appendix A of chapter HFS 12, as created by emergency order effective October 1, 1998, is repealed and recreated to read:

940.02	1 st degree reckless homicide (F)	Foster care permanent bar; other, bar w/rehab
940.03	Felony murder (F)	Foster care permanent bar; other, bar w/rehab
940.05	2 nd degree intentional homicide (F)	Bar w/rehab
940.06	2 nd degree reckless homicide (F)	Foster care permanent bar; other, bar w/rehab
940.07	Homicide by negligent control of vicious animal (F)	Bar w/rehab
940.08	Homicide by negligent handling of dangerous weapon, explosives or fire. (F)	Foster care permanent bar; other bar w/rehab
940.09	Homicide by intoxicated use of vehicle or firearm (F)	Bar w/rehab
940.12	Assisting suicide (F)	Bar w/rehab
940.19(1)	Battery (M –domestic)	Bar w/rehab
940.19(2)-(6)	Battery (F)	Foster care bar for 5 years if spouse; other, bar w/rehab
940.195	Battery to an unborn child (F or M)	Bar w/rehab
940.20	Battery – special circumstances (F)	Foster care permanent bar if spouse; other, bar w/rehab
940.203	Battery or threat to a judge (F)	Foster care bar for 5 years; other, bar w/rehab
940.205	Battery or threat to Department of Revenue employe (F)	Foster care bar for 5 years; other, bar w/rehab
940.207	Battery or threat to Department of Commerce employe (F)	Foster care bar for 5 years; other, bar w/rehab
940.21	Mayhem (F)	Bar w/rehab
940.22(2)	Sexual exploitation by therapist – sexual contact (F)	Bar w/rehab
940.22(3)	Sexual exploitation by therapist – duty to report (F)	Bar w/rehab
940.225(1)	1 st degree sexual assault (F)	Permanent bar
940.225(2)	2 nd degree sexual assault (F)	Permanent bar
940.225(3)	3 rd degree sexual assault (F)	Permanent bar
940.225 (3m)	4 th degree sexual assault (M)	Bar w/rehab
940.23	Reckless injury (F)	Foster care permanent bar; other, bar w/rehab

940.285 (2)(b)1 or 2	Abuse of vulnerable adults (F)	Permanent bar
940.285 (2)(b)3, 4, or 5	Abuse of vulnerable adults (F or M)	Bar w/rehab
940.29	Abuse of residents of a penal facility (F)	Permanent bar
940.291	Law enforcement officer – failure to render aid (M)	Bar w/rehab
940.295	Abuse/neglect of a patient or resident (F)	Permanent bar
940.295	Abuse/neglect of a patient or resident (M)	Bar w/rehab
940.30	False imprisonment (F)	Bar w/rehab
940.305	Taking hostages (F)	Bar w/rehab
940.31	Kidnapping (F)	Bar w/rehab
940.32	Stalking (F or M)	Bar w/rehab
940.43	Intimidation of witnesses (F or M)	Bar w/rehab
940.45	Intimidation of victims (F or M)	Bar w/rehab

Chapter 941 – Crimes Against Public Health and Safety

941.20	Endangering safety - dangerous weapon (M)	Bar w/rehab
941.20(2)	Endangers safety – dangerous weapon, discharge weapon into vehicle/building (F)	Foster care permanent bar; other, bar w/rehab
941.20(3)	Endangers safety – dangerous weapon, discharge weapon from vehicle (F)	Foster care permanent bar; other, bar w/rehab
941.21	Disarming a peace officer (F)	Foster care permanent bar
941.235	Carrying a firearm in public building (M)	Bar w/rehab
941.26	Sale, possession, use or transport of machine guns or certain other weapons (F)	Bar w/rehab
941.28	Possession of short barreled shotgun/rifle (F)	Bar w/rehab
941.29	Possession of firearm (F)	Bar w/rehab
941.296	Use or possession of a handgun and armor-piercing bullet during crime (F)	Bar w/rehab
941.298	Sale, delivery or possession of firearm silencer (F)	Bar w/rehab
941.30	Recklessly endangering safety (F)	Bar w/rehab

941.31	Possession of explosives (F)	Bar w/rehab
941.315	Possession, distribution or delivery of nitrous oxide (F)	Bar w/rehab
941.32	Administering dangerous or stupefying drug (F)	Bar w/rehab
941.327	Tampering with household product (F)	Bar w/rehab
941.38 (2)	Criminal gang member, solicit child (F)	Bar w/rehab
941.38 (3)	Criminal gang member solicitation and contact (F)	Bar w/rehab

Chapter 942 – Crimes Against Reputation and Civil Liberty

942.08	Invasion of privacy (M)	Bar w/rehab
--------	-------------------------	-------------

Chapter 943 – Crimes Against Property

943.01	Damage to property (F)	Bar w/rehab
943.011	Damage or threat to property of witness (F)	Bar w/rehab
943.02	Arson of a building or damage of any property by explosives (F)	Bar w/rehab
943.03	Arson of property other than a building (F)	Bar w/rehab
943.04	Arson with intent to defraud (F)	Bar w/rehab
943.06	Molotov cocktails (F)	Bar w/rehab
943.10 (1)	Burglary (F)	Bar w/rehab
943.10 (2)	Burglary while armed (F)	Foster care permanent bar; other. bar w/rehab
943.12	Possession of burglarious tools (F)	Bar w/rehab
943.20	Theft (F)	Bar w/rehab
943.201	Misappropriation of personal identifying information or documents (F)	Bar w/rehab
943.23	Operating motor vehicle without owner's consent – w/weapon & force (F)	Bar w/rehab
943.30	Threat to injure or accuse of crime (blackmail) (F)	Bar w/rehab
943.31	Threat to communicate derogatory information (F)	Bar w/rehab
943.32 (1)	Robbery (F)	Bar w/rehab
943.32 (2)	Robbery w/dangerous weapon (F)	Bar w/rehab

943.50 Retail theft (F) Bar w/rehab

Chapter 944 – Crimes Against Sexual Morality

944.17 Sexual gratification (M) Bar w/rehab

944.20 Lewd and lascivious behavior (M) Bar w/rehab

944.205 Photos or other representations showing nudity (F) Bar w/rehab

944.21 Obscene material or performance (F or M) Bar w/rehab

944.23 Making lewd, obscene or indecent drawings (M) Bar w/rehab

944.30 Prostitution (M) Bar w/rehab

944.32 Soliciting prostitutes (F) Bar w/rehab

944.33 Pandering (F or M) Bar w/rehab

944.34 Keeping place of prostitution (F) Bar w/rehab

Chapter 946 – Crimes Against Government and Its Administration

946.415 Failure to comply w/officer's attempt to take person into custody (F) Bar w/rehab

946.42 Escape from custody (F) Bar w/rehab

946.43 Assault by prisoner – confine or threaten to harm (F) Bar w/rehab

946.44 Assisting/permitting escape (F) Bar w/rehab

946.47 Harboring a felon (F) Bar w/rehab

946.50 Absconding – juvenile (F) Bar w/rehab

946.70 Impersonating peace officer to commit crime (F) Bar w/rehab

946.74(1) Aiding escape from mental institution (M) Bar w/rehab

946.74(2) Aiding escape from mental institution to commit sex crime (F) Permanent bar

946.80 – Racketeering (organized crime, RICO) (F) Bar w/rehab
946.88

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

947.013 Harassment (F) Bar w/rehab

Chapter 948 – Crimes Against Children

948.02 (1) 1st degree sexual assault of a child (F) Permanent bar

948.02 (2)	2 nd degree sexual assault of a child (F)	Bar w/rehab
	<ul style="list-style-type: none"> if person was, at the time of assault, more than 4 years older than the child 	Permanent bar
948.02(3)	Sexual assault of a child – failure to act (F)	Permanent bar
948.025	Repeated acts of sexual assault of same child (F)	
	<ul style="list-style-type: none"> if child was under the age of 13 	Permanent bar
	<ul style="list-style-type: none"> if child was age 13, 14 or 15 and person was, at the time, more than 4 years older than the child 	Foster care permanent bar; other, bar w/rehab
	<ul style="list-style-type: none"> other 	Foster care permanent bar; other, bar w/rehab
948.03 (2)(a)	Physical abuse of a child – intentionally causes great bodily harm (F)	Permanent bar
948.03(2)(b) or (c)	Physical abuse of a child-intentionally causes bodily harm (F)	Foster care permanent bar, other, bar w/rehab
948.03 (3)	Physical abuse of a child – recklessly causes bodily harm (F)	Foster care permanent bar; other, bar w/rehab
948.03 (4)(a)	Physical abuse of a child involving great bodily harm – failure to act (F)	Permanent bar
948.03(4)(b)	Physical abuse of a child involving bodily harm – failure to act (F)	Foster care permanent bar; other, bar w/rehab
948.04	Causing mental harm to a child (F)	Permanent bar
948.05	Sexual exploitation of a child (F)	Permanent bar
948.055	Causing a child to view or listen to sexual activity (F)	Permanent bar
948.06	Incest with a child (F)	Permanent bar
948.07	Child enticement (F)	Permanent bar
948.08	Soliciting a child for prostitution (F)	Permanent bar
948.09	Sexual intercourse with a child age 16 or older (M)	Bar w/rehab
948.095	Sexual assault of student by a school staff person (F)	Foster care permanent bar; other, bar w/rehab
948.10	Exposing genitals or pubic area (M)	Bar w/rehab
948.11	Exposing child to harmful material or harmful descriptions or narrations (F)	Permanent bar

948.11	Exposing child to harmful material or harmful descriptions or narrations (M)	Bar w/rehab
948.12	Possession of child pornography (F)	Permanent bar
948.13	Child sex offender working with children (F)	Permanent bar
948.20	Abandonment of a child (F)	Foster care permanent bar; other, bar w/rehab
948.21	Neglecting a child – intentional, resulting in death (F)	Permanent bar
948.21	Neglecting a child – intentional (M)	Bar w/rehab
948.22	Failure to support (F)	Foster care permanent bar
948.23	Concealing death of a child (F)	Foster care permanent bar; other, bar w/rehab
948.24	Unauthorized placement for adoption (F)	Foster care permanent bar; other, bar w/ rehab
948.30	Abduction or detention of another's child (F)	Permanent bar
948.31	Interference with custody by parent or others (F)	Foster care permanent bar; other, bar w/rehab
948.35	Solicitation of a child to commit a felony (F)	Foster care permanent bar; other, bar w/rehab
948.36	Use of a child to commit a class A felony (F)	Permanent bar
948.40	Contributing to the delinquency of a minor (F)	Foster care permanent bar; other, bar w/rehab
948.51	Hazing (F)	Foster care permanent bar; other, bar w/rehab
948.55	Leaving or storing a loaded firearm within the reach or easy access of a child (M)	Bar w/rehab
948.60	Possess dangerous weapon by a person under 18 (F)	Foster care permanent bar; other, bar w/rehab
948.605 (3)	Discharge of firearm in a school zone (F)	Foster care permanent bar; other, bar w/rehab
948.61	Possess dangerous weapon other than firearm on school premises (F)	Foster care permanent bar; other, bar w/rehab
948.62	Receiving stolen property from a child (F)	Foster care permanent bar
948.--	All other ch. 948 felonies	Foster care permanent bar

Chapter 951 – Crimes Against Animals

951.02	Mistreating animals (F)	Bar w/rehab
--------	-------------------------	-------------

Chapter 961 – Controlled Substances (Formerly ch. 161 crimes)

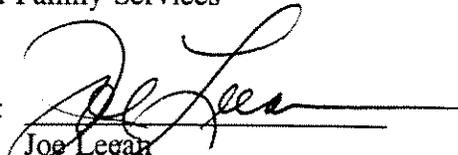
961.38	Practitioner “self-prescribing” (M)	Bar w/rehab
961.--	Manufacture, distribution or delivery of controlled substances (F)	Foster care bar for 5 years; other, bar w/rehab
	Possession of controlled substances w/intent to manufacture, distribute or deliver (F)	Foster care bar for 5 years; other, bar w/rehab
	Possession of a Schedule I or II controlled substance (F)	Foster care bar for 5 years; other, bar w/rehab
	Possession of a controlled substance other than a Schedule I or II controlled substance (F)	Foster care bar for 5 years; other, bar w/rehab
961.41 (3g) (c)	Possession or attempted possession of cocaine (M)	Bar w/rehab
961.42	Keep/maintain any store, warehouse, building, etc. for use manufacture or delivery of controlled substances (M)	Bar w/rehab
961.43 (1) (a)	Acquire or obtain possession of controlled substances by fraud, misrepresentation, forgery, deception or subterfuge (F)	Foster care bar for 5 years; other, bar w/rehab
961.43 (1) (b)	To possess/make a counterfeit substance or to duplicate the appearance, packaging, form or label of a controlled substance (F)	Foster care bar for 5 years; other, bar w/rehab
961.455	Using a child for illegal drug distribution or manufacturing purposes (F)	Foster care bar for 5 years; other, bar w/rehab
961.46	Distribution to persons under 18 (F)	Foster care bar for 5 years; other, bar w/rehab
961.46	Distribution to persons under 18 (M)	Bar w/rehab
961.465	Distribution to prisoners (F or M)	Foster care bar for 5 years; other, bar w/rehab
961.49	Distribution of or possession with intent to deliver at or near certain places (F)	Foster care bar for 5 years; other, bar w/rehab
961.492	Distribution of or possession with intent to deliver on public transit (F)	Foster care bar for 5 years; other, bar w/rehab
961.575	Delivery of drug paraphernalia to a minor (M)	Bar w/rehab

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

Wisconsin Department of Health
and Family Services

Dated: December 4, 1998

By:


Joe Leech
Secretary

SEAL: