

1997-98 SESSION
COMMITTEE HEARING
RECORDS

Committee Name:

*Joint Committee for
Review of
Administrative Rules
(JCR-AR)*

Sample:

- Record of Comm. Proceedings
- 97hrAC-EdR_RCP_pt01a
- 97hrAC-EdR_RCP_pt01b
- 97hrAC-EdR_RCP_pt02

➤ Appointments ... Appt

➤

➤ Clearinghouse Rules ... CRule

➤

➤ Committee Hearings ... CH

➤

➤ Committee Reports ... CR

➤

➤ Executive Sessions ... ES

➤

➤ Hearing Records ... HR

➤

➤ Miscellaneous ... Misc

➤ 97hr_JCR-AR_Misc_pt18

➤ Record of Comm. Proceedings ... RCP

➤

DWD 5-5 CERT DAY CARE
STANDARDS



Office of the Secretary
Department of Workforce Development

201 E. Washington Ave. • P.O. Box 7946 • Madison, WI 53707-7946 • 608-266-7552 • Fax: 608-266-1784

FOR YOUR INFORMATION

- New DWD emergency roles
on certified day care
and child support
enforcement.

- Howard Bernstein
266-9427

Tommy G. Thompson
Governor

Linda Stewart
Secretary



State of Wisconsin

Department of Workforce Development

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September 30, 1998

Gary Poulson
Assistant Revisor of Statutes
Suite 800
131 W. Wilson St.
Madison, Wisconsin 53703-3233

Douglas LaFollette
Secretary of State
10th Floor
30 West Mifflin Street
Madison, Wisconsin 53703

Dear Messrs. Poulson and LaFollette:

TRANSMITTAL OF RULE ADOPTION

CLEARINGHOUSE RULE NO.: Emergency Rule
RULE NO.: DWD 55, Wis. Adm. Code
RELATING TO: Certified Day Care Standards

Pursuant to section 227.20, Stats., agencies are required to file a certified copy of every rule adopted by the agency with the offices of the Secretary of State and the Revisor of Statutes.

At this time, the following material is being submitted to you:

1. Order of Adoption.
2. Rules Certificate Form.
3. Rules in Final Draft Form.

Pursuant to section 227.114, Stats., a summary of the final regulatory flexibility analysis is included for permanent rules. A fiscal estimate and fiscal estimate worksheet is included with an emergency rule.

Respectfully submitted,

A handwritten signature in cursive script that reads "Linda Stewart".

Linda Stewart
Secretary



ORDER OF ADOPTION

Pursuant to authority vested in the Department of Workforce Development by section 49.155(1m)(d),

Stats., the Department of Workforce Development creates; amends;

repeals and recreates; repeals and adopts rules of Wisconsin Administrative Code chapter(s):

DWD 55

(Number)

Certified Day Care Standards

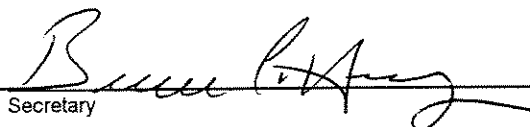
(Title)

The attached rules shall take effect on October 1, 1998, pursuant to section 227.24, Stats.

Adopted at Madison, Wisconsin this

date: September 29, 1998.

DEPARTMENT OF WORKFORCE DEVELOPMENT


Secretary

RULES CERTIFICATE

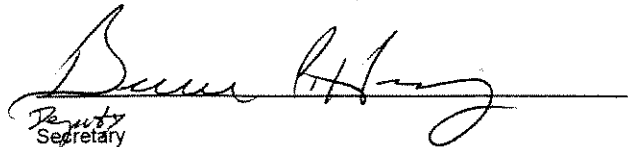
STATE OF WISCONSIN)
) SS
DEPARTMENT OF)
WORKFORCE DEVELOPMENT)

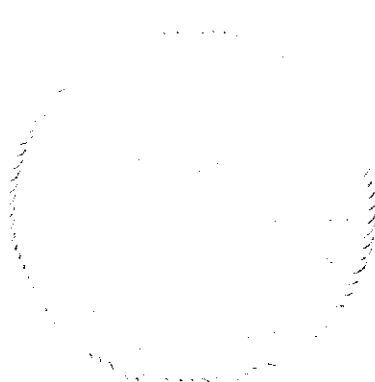
TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Linda Stewart, Secretary of the Department of Workforce Development, and custodian of the official records of said department, do hereby certify that the annexed rule relating to certified day care standards was duly approved and adopted by this department on September 29, 1998.

I further certify that said copy has been compared by me with the original on file in the department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the department at 10 A.M. in the city of Madison, this 29th day of September, 1998.


Linda Stewart
Secretary



x ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

FISCAL ESTIMATE
DOA-2048 E (R 07/97)

Subject
Certified Child Care Standards and Background Reviews

Fiscal Effect

State: No State Fiscal Effect

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

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

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

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

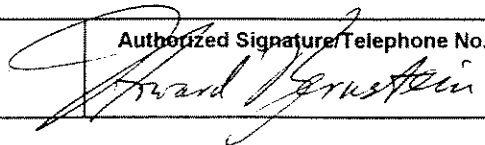
Assumptions Used in Arriving at Fiscal Estimate

This is the rule to implement the changes to the certified child care program made in 1997 Wisconsin Act 27 which relate to the requirement for background reviews of providers, employes, persons under contract and nonclient residents. All costs to the Department and local governments for the implementation of these changes were considered as a part of the 1997-1999 biennial budget act, 1997 Wisconsin Act 27. There are no additional costs for state or local governments as a result of the promulgation of these administrative rule changes.

Long-Range Fiscal Implications

None.

Agency/Prepared by: (Name & Phone No.)
DWD Howard Bernstein 266-9427

Authorized Signature/Telephone No.
 266-9427

Date
9/29/98

FISCAL ESTIMATE WORKSHEET

1997 Session

Detailed Estimate of Annual Fiscal Effect
DOA-2047 (R 07 97)

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
DWD 55

Amendment No.

Subject
Certified Child Care Standards and Background Reviews

I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):
\$0

II. Annualized Costs:		Annualized Fiscal impact on State funds from:	
A. State Costs by Category		Increased Costs	Decreased Costs
State Operations - Salaries and Fringes		\$0	\$ -0
(FTE Position Changes)		(FTE)	(- FTE)
State Operations - Other Costs			-
Local Assistance			-
Aids to Individuals or Organizations			-
TOTAL State Costs by Category		\$0	\$ -0
B. State Costs by Source of Funds		Increased Costs	Decreased Costs
GPR		\$	\$ -
FED			-
PRO/PRS			-
SEG/SEG-S			-
III. State Revenues - Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)		Increased Rev.	Decreased Rev.
GPR Taxes		\$	\$ -
GPR Earned			-
FED			-
PRO/PRS			-
SEG/SEG-S			-
TOTAL State Revenues		\$0	\$ -0

NET ANNUALIZED FISCAL IMPACT

	<u>STATE</u>	<u>LOCAL</u>
NET CHANGE IN COSTS	\$0	\$0
NET CHANGE IN REVENUES	\$0	\$0

Agency/Prepared by: (Name & Phone No.)
DWD/DES Howard Bernstein 266-9427

Authorized Signature/Telephone No.
 266-9427

Date 9/29/98

State of Wisconsin Department of Workforce Development

DAY CARE CERTIFICATION

The Wisconsin Department of Workforce Development proposes an order to renumber HFS 55.55 to 55.62; amend DWD 55.02(4) and (22), 55.03(2)(c), 55.04(2)(a) and (b), (3)(c), (d)1. and 2., (5)(a) and (b), (7)(a) and (b)1. and (8); repeal and recreate DWD 55.02(1) and 55.05; and create DWD 55.02(3m), (5m) and (17m), 55.04(9), 55.10 and 55.11, relating to background checks for persons involved with certified day care.

Finding of Emergency

The Department of Workforce Development finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, health, safety and welfare. A statement of the facts constituting the emergency is:

Beginning on October 1, 1998, recently enacted provisions in ch. 48, Stats., require the completion of background reviews on caregivers and others who come into contact with clients in the programs operated by caregivers. Although most of these provisions are administered by the Department of Health and Family Services, they also include day care programs certified by the Department of Workforce Development. DWD is adopting this emergency rule so that county and tribal social services agencies and human services agencies will be able to implement the new background review requirements in relation to certified day care programs as they become effective.

Analysis

Authority for rule. sec. 49.155(1m)(d), Stats.

Statute interpreted. sec. 49.155(1m)(d), Stats.

In accordance with the statute cited above and administrative rules under consideration by the Department of Health and Family Services under sec. 48.685, Stats., the Department of Workforce Development proposes this rule to place into effect requirements for background reviews and decisions on day care certification, employment, contracting, and nonclient residents living in the provider's home. The following provisions are added to the DWD rule on day care certification:

Requirements for background information. Effective October 1, 1998, a completed background information disclosure form must be submitted to the county or tribal social or human services agency by any new prospective certified day care provider, prospective employee, prospective contractor, or prospective nonclient resident in the provider's home. The forms must be completed every four years. This requirement applies to existing providers, employees, persons

under contract and nonclient residents effective October 1, 1999. In addition to reviewing the disclosure forms, the agency is required to obtain background information from the Department of Justice and the Department of Health and Family Services.

Regulatory approval and client access standards. For persons who have been convicted of or who have committed serious crimes, acts or offenses, the rule incorporates DHFS tables which list which crimes are “nonrehabilitative,” which means that the bar on employment may not be lifted by the agency after a rehabilitation review process. The rule also specifies the eligibility factors for a person who may be entitled to seek a rehabilitation review, lists the factors that the agency should consider in deciding on the review, and specifies the procedure to be followed. A person whose rehabilitation review request is approved may be required to comply with specific conditions and limitations, and a rehabilitation approval may be rescinded if those conditions are violated. An agency is not required to bar an existing entity, employe, person under contract or nonclient resident who meets the eligibility requirements and has submitted a rehabilitation review request that has not been decided by October 1, 1999, until the agency has completed its consideration of the rehabilitation review request.

SECTION 1. HFS 55.55 to 55.62 are renumbered to DWD 55.01 to 55.08.

SECTION 2. DWD 55.02(1) is repealed and recreated to read:

DWD 55.02(1) “Agency” has the same meaning as “county agency.”

SECTION 3. DWD 55.02(3m) is created to read:

DWD 55.02(3m) “Client” means a child who receives direct care from an entity.

SECTION 4. DWD 55.02(4) is amended to read:

DWD 55.02(4) “County agency” means a county department of social services

established under s. 46.215 or 46.22, Stats., or a county department of human services established under s. 46.23, Stats., and includes a tribal agency.

SECTION 5. DWD 55.02(5m) is created to read:

DWD 55.02(5m) “Entity” means a day care provider that is certified under s. 48.65,

Stats.

SECTION 6. DWD 55.02(17m) is created to read:

DWD 55.02(17m) "Regulatory approval" means issuance of a certification continuation or renewal of a certification.

SECTION 7. DWD 55.02(22) is amended to read:

DWD 55.02(22) "Wisconsin works participant" or "W-2 participant" means an individual participating in the Wisconsin works program ~~for families with dependent children~~ administered under ss. 49.141 to 49.161, Stats.

SECTION 8. DWD 55.03(2)(c) is amended to read:

DWD 55.03(2)(c) The care permits a ~~Job Opportunities and Basic Skills (JOBS) program~~ enrollee Wisconsin works participant to attend a JOBS program activity ~~prior to the development of an employability plan under s. 49.193 (4), Stats.,~~ approved by a JOBS administrative W-2 agency.

SECTION 9. DWD 55.04(2)(a) and (b), (3)(c), (d)1. and 2., (5)(a) and (b), (7)(a) and (b)1., and (8) are amended to read:

DWD 55.04(2)(a) Family day care and in-home providers are required to meet the standards under s. ~~HFS 55.61~~ DWD 55.08 and may care for preschool children or school-age children or a combination of preschool and school-age children consistent with Table ~~55.61-(6)~~ 55.08(6).

(b) School-age day care programs are required to meet the standards under s. ~~HFS 55.62~~ DWD 55.09.

(3)(c) The applicant shall ~~submit a completed notarized background character verification form for each provider, employe, prospective employe, substitute or adult living in the provider's home~~ comply with the background information requirements of s. DWD 55.09.

(3)(d)1. If the application is for certification under sub. (2)(a), the county or tribal agency shall review the application for compliance with standards under s. ~~HFS 55.61~~ DWD 55.08 prior to issuing a certificate.

2. If the application is for certification under sub. (2)(b), the county or tribal agency shall refer the application to a licensing representative in the department of health and family services regional office. The licensing representative shall determine whether the applicant is in compliance with all standards under s. ~~HFS 55.62~~ DWD 55.09 and report back to the county or tribal agency. The county or tribal agency may issue a certificate based on the licensing representative's report.

(5)(a) Level I (regular) certification may be issued only after the provider has demonstrated compliance with all certification standards including training. Level I (regular) certification shall be for a period of 2 years and shall be renewed upon application if the provider continues to comply with the certification standards under s. ~~HFS 55.61 or 55.62~~ DWD 55.08 or 55.09. A provider is not eligible to be issued Level I (regular) certification if the provider is related to all the children in the provider's care.

(b) Level II (provisional) certification may be issued only after the provider has demonstrated compliance with all certification standards under s. ~~HFS 55.61~~ DWD 55.08, except standards for training under s. ~~HFS 55.61 (1) (b)~~ DWD 55.08(1)(b). Level II (provisional) certification shall be for a period of 2 years and shall be renewed upon application if the provider continues to comply with the certification standards, except standards for training under s. ~~HFS 55.61 (1) (b)~~ DWD 55.08(1)(b).

(7)(a) County and tribal agencies shall maintain records demonstrating provider compliance with s. ~~HFS 55.61(1)~~ DWD 55.08(1).

(b)1. County and tribal agencies shall help assure provider compliance with s. ~~HFS 55.61 (2) to (12)~~ DWD 55.08 (2) to (12) in accordance with this paragraph.

(8) A county or tribal agency may grant an exception to any standard in s. ~~HFS 55.61 or 55.62~~ DWD 55.08 or 55.09 if the county or tribal agency determines that an alternative means meets the intent of the requirement, except for rules related to criminal background investigation required under s. ~~48.651 (2)~~ 48.685, Stats.

SECTION 10. DWD 55.04(9) is created to read:

DWD 55.04(9) CERTIFICATION DECISION AFTER BACKGROUND REVIEW. (a)

The county or tribal agency, upon review of the information provided on a department background information disclosure form of a person, shall not certify a person until there is a satisfactory review of the person's criminal background and other information, and shall not certify the person if the person has been convicted of, or has pending against him or her a charge of a serious crime, unless that person can demonstrate that he or she has been rehabilitated. No person who has been convicted of or has committed or has been adjudicated delinquent, on or after his or her 12th birthday, of any of the following acts or offenses may be permitted to demonstrate that he or she has been rehabilitated:

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 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.

6. A crime, act or offense identified by the department which precludes a showing of rehabilitation as listed in Table DWD 55.

(b) If a county agency upon review of a department background information disclosure form of a person and any other information that may be available, finds that the person has not committed a serious crime, act or offense, the county agency may grant certification for not more than 60 days pending receipt and satisfactory review of the criminal background and other required information. Where less serious crimes, acts, or offenses are indicated on the department background information form, the county agency shall ensure appropriate precautionary measures are taken to ensure that clients are protected. This may mean delaying issuance of certification.

SECTION 11. DWD 55.05 is repealed and recreated to read:

DWD 55.05 Regulatory approval and client access standards. (1) SERIOUS CRIMES, ACTS OR OFFENSES. A county agency may not certify or renew certification and continue payment for care to a person if the county agency knows or should have known that:

- (a) The person has been convicted of a serious crime.
- (b) The person has pending against him or her a charge for a serious crime.
- (c) A unit of government or a state agency has made a finding that the person has abused or neglected any client or misappropriated the property of any client.
- (d) That a determination has been made under s. 48.981(3)(c)4., Stats., that the person has abused or neglected a child.

(e) That, in the case of a position for which the person must be credentialed by the department of regulation and licensing, the person's credential is not current or is limited so as to restrict the person from providing adequate care to a client.

(2) REHABILITATION. A county agency may, as applicable, remove a bar imposed under sub. (1), if that person is eligible for rehabilitation review and has received rehabilitation approval.

(3) NONREHABILITATIVE CRIMES. No person who has been convicted of any of the following offenses or has committed any of the following acts or offenses may be permitted to demonstrate to an agency that he or she has been rehabilitated:

(a) First degree intentional homicide under s. 940.01, Stats.

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

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

(d) 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 four years older than the child with whom the person had the sexual contact or sexual intercourse.

(e) 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 four years older than the child with whom the person had the sexual contact or sexual intercourse.

(f) A crime, act or offense identified by the department which precludes a showing of rehabilitation as listed in Table DWD 55.

(4) REHABILITATION OF SERIOUS CRIMES. A person who has not committed a serious crime identified under sub. (3) may seek rehabilitation review for other serious crimes,

acts, or offenses identified as rehabilitative in Table DWD 55, including crimes or acts involving misappropriation of property or abuse or neglect of a client.

(a) *Request for rehabilitation review.* A person who is refused regulatory approval by an agency, or who is refused employment or permission to reside as a nonclient at an entity, because of a crime, act, or offense identified as a rehabilitative crime in Table DWD 55, shall be offered by the agency and may request a rehabilitation review. A person eligible for rehabilitation review and who wishes to seek rehabilitation review shall make a written request to a county department on a department rehabilitation review application request form and show, with the burden of proof by clear and convincing evidence, that he or she is rehabilitated.

(b) *Eligibility.* A person barred for any reason listed in sub. (1) by a county department from operating an entity is eligible to submit a rehabilitation review request to lift the bar if:

1. The person has not committed a crime for which rehabilitation is prohibited under sub. (3).
2. The person does not have, through a background information check, a pending charge for a serious crime, act, or offense under sub. (1) and (3) or other crime, act, or offense that substantially relates to the care of a client.
3. 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.
4. The person is not a registered sex offender.
5. The person is not currently serving a commitment or sentence.
6. The person is not currently under the supervision of the department of corrections or on probation or parole.

7. The person has not requested a rehabilitation review until at least 1 year after the end of probation or parole.

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

(c) *Specific situations.* A person who is determined eligible and desires rehabilitation review is permitted rehabilitation review where any one or more of the following apply:

1. The person has committed a crime identified by the department under sub. (1) for which rehabilitation review is required and the person does not have a pending charge for any criminal or municipal ordinance offense, including traffic other than parking or speeding.

2. 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.

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

(d) *Review procedures.* Upon receipt of a rehabilitation application review request, the agency shall appoint a review panel of 2 to 5 persons to inquire, gather, and review as necessary, any other relevant information from agencies and persons identified in the written application. The panel shall give the applicant requester an opportunity to appear before the review panel to provide answers to questions the review panel may have that may be needed in rendering a rehabilitation decision.

(e) *Rehabilitation decision.* The agency review panel shall render a decision as to whether the information provided establishes the applicant's rehabilitation by clear and convincing evidence based upon, but not limited to, the following guidelines and as otherwise established in the department's review procedures:

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

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

3. Proof that the person is free from encounters with law enforcement or civil enforcement agencies.

4. Aggravating or mitigating circumstances in relation to the reason or reasons for the crime, act, or offense.

5. Other evidence of rehabilitation, such as public or community service, volunteer work, or recognition by public or private authorities for accomplishments or efforts.

6. Favorable statements from therapists, counselors and other professionals.

7. Attempts or efforts at restitution.

8. Victim's impact statement.

9. Ability to remain employed, ability to develop positive social interaction, and increased independence or autonomy of daily living.

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

(f) *Rehabilitation review decision response.* 1. The agency's review panel shall render a written decision in accordance with the criteria used to make a rehabilitation decision to the requester within 90 working days of the requester's submitted written application request for rehabilitation review.

2. If the decision is an approval, it shall describe the scope of the rehabilitation approval with any conditions or limitations that may be prescribed. For example, the decision shall state

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 regulatory entity and any conditions or limitations that may be prescribed for certification.

3. If the decision is not to approve the rehabilitation request, the agency review panel's written response must explain the reasons for nonapproval and inform the applicant that he or she has the right to file an appeal on the decision as follows:

a. Any person who is permitted but fails to demonstrate to a county department that he or she has been rehabilitated may appeal to the director of the county department or designee.

b. Any person adversely affected by a decision of the director or designee has the right to appeal the decision under ch. 68, Stats.

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

(g) *Rehabilitation approval compliance.* A person whose rehabilitation request review application has been approved shall comply with all conditions and limitations that are included in the approval. The applicable approving agency or the department may deny or rescind a rehabilitation approval of a person when the agency has knowledge that the person has done any one or more of the following:

1. The person has failed to comply with the conditions or limitations of an approval.

2. The person is no longer eligible for regulatory approval or employment, contracting with or residency at an entity under sub. (1).

3. The person has knowingly submitted false information or withheld pertinent information relevant to the rehabilitation request that could have affected the review panel's decision to approve the person's rehabilitation.

(h) *Violation of rehabilitation approval.* An entity or agency that is aware of any person who has violated a rehabilitation approval for a reason listed in par. (g) shall inform the agency that approved the person's rehabilitation. The approving agency shall consider whether the new information received is valid and represents a risk of harm to the client and, if so, it shall immediately rescind the rehabilitation approval, thereby reinstating the person's bar as applicable to regulatory approval. If the new information does not represent a risk of harm to a client, the agency shall work in concert with the entity and consider as necessary any measures to mitigate the situation such as appropriate limitations on the certificate. A person whose rehabilitation approval is withdrawn under this paragraph may file an appeal of the decision as described in par. (f).

(i) *Reporting.* Each county department shall maintain its records concerning each person who is denied a certificate. The agency shall send a completed copy of the department's required reporting form to the subunit of the department of health and family services responsible for collecting such information for all rehabilitation review decisions. Also, any rehabilitation approval withdrawn resulting in a bar by the approving agency shall be immediately reported to the subunit of the department of health and family services responsible for collecting information.

NOTE: The address of the subunit of the department on where to send information on a denial of a license is: (to be determined by DHFS)

(j) *Scope of agency rehabilitation approval.* 1. 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 application. An approval is

not transferable outside the scope of the agency's regulatory authority or to other job functions than those specified in the rehabilitation approval by that agency.

NOTE: For example, an approval to be a certified provider by one county is not, unless approved by the other county, transferable to the other county. As another example, rehabilitation approval for day care certification is not transferable to a child caring institution or to a hospital or nursing home.

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 and if the job 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. If the regulatory agency is the department of health and family services, it shall be the receiving regulatory subunit of the department that will decide whether a rehabilitation approval is transferable to that regulatory subunit.

(k) *Applicant request to transfer rehabilitation approval.* Upon notification on the department's background information disclosure form that an applicant has had a rehabilitation review, an agency shall request a copy of the rehabilitation decision from the applicant. If the applicant previously received an approval in response to a rehabilitation review, the agency shall determine if the approval is acceptable for the regulatory approval, job functions, or activities for which the applicant is currently applying. If the applicant did not previously receive an approval, the agency shall determine whether the applicant is eligible for and may seek another rehabilitation review and inform the applicant. The agency shall verify with the subunit of the department of health and family services responsible for gathering such information, whether a prospective entity, employe, or nonclient resident has ever had a rehabilitation review and, if so, the date and status of that review and establish whether any new reason exists for requiring a rehabilitation review.

(5) CRIMES THAT SUBSTANTIALLY RELATE TO THE CARE OF A CLIENT. (a)

(Grounds for decision. A county agency may bar a person from certification any time the agency believes that any other crime, act, or offense otherwise not identified under sub. (1) and committed by a provider, employe, or nonclient resident where the person was convicted of or adjudicated delinquent on or after his or her 12th birthday, is considered to be substantially related to the care of a client or the activities and operation at a child care program.

(b) *Substantially related criteria.* The agency shall review the following criteria in making decisions under this subsection.

1. The job. The nature and scope of the job's client contact, discretionary authority and degree of independence in judgment relating to decisions or actions which affect the care of clients, the opportunity the job presents for the commission of similar offenses, the extent to which acceptable job performance requires the trust and confidence of clients and their parent or guardian, the amount and type of supervision received in the job.

2. The offense. Whether intent is an element of the offense, whether the elements or circumstances of the offense are substantially related to the job duties, the pattern of offenses, the extent to which the offense relates to vulnerable clients, whether the crime involves violence or threat of violence, or whether the crime is of a sexual nature.

3. The individual. The number and type of offenses for which the individual has been convicted, the length of time between the convictions and the employment decision, the individual's employment history, including references if available, the individual's participation in or completion of pertinent programs of a rehabilitative nature, the individual's probation or parole status, the individual's ability to perform or continue to perform the job consistent with the

safe and efficient operation of the program, the confidence of the clients served, including their parents and guardians, and the age of the individual on the date of conviction.

(6) LESS SERIOUS CRIMES, ACTS OR OFFENSES. (a) *Grounds for decision.* A county agency may impose less stringent measures other than a bar on regulatory approval, or barring employment, nonclient residency, or other similar type of association by an entity where less serious crimes, acts, or offenses committed by a person are found to be substantially related to the care of a client or the activities and operations of a child care program. A county agency shall impose as applicable and appropriate, special precautionary measures on persons seeking certification or persons having contact with clients who are either employed, nonclient residents, or have any other similar type of association with the entity if that person has committed a less serious crime.

(b) *Conditions which may be imposed.* When taking action under this subsection, a county agency may adopt precautionary measures including but not limited to the following:

1. Conditions 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 the regulatory function or job task where appropriate, prescribed limited contact or supervised contact with clients.

2. Closer supervision or special supervision arrangements, such as partnering with another person not having any background history problems.

3. Medication monitoring.

4. Prior evaluation and recommendations from appropriate professionals, such as psychiatrists, or psychologists.

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

6. Ban on transporting clients.
7. Periodic alcohol or drug testing.

(7) OTHER STANDARDS OF REVIEW. The county agency may deny, suspend, revoke or refuse to renew certification and discontinue payment for care if any of the following apply:

(a) The provider is not in compliance with certification standards under s. DWD 55.08 or 55.09, as appropriate.

(b) The provider's references or other community information does not support the provider's declaration that he or she is able to provide an acceptable level of child care.

(c) The county agency determines there is danger to the health, safety or welfare of the children in care.

SECTION 12. DWD 55.10 is created to read:

DWD 55.10 Background information requirements. (1) NEW PROVIDERS.

Effective October 1, 1998, this subsection applies to a prospective certified provider, a prospective employe, including a prospective substitute employe, a prospective person under contract, and a prospective nonclient resident living in the provider's home who is 12 years of age or older.

(a) A person described in sub. (1)(intro.) shall submit a completed background information disclosure form every four years to the county agency.

(b) The county agency shall obtain criminal and other background history for each person described in sub. (1)(intro.)

(2) EXISTING PROVIDERS. Effective October 1, 1999, this subsection applies to a certified provider, employe, person under contract, or nonclient resident living in the provider's home who is 12 years of age or older.

(a) A person described in sub. (2)(intro.) shall submit a completed background information disclosure form every four years to the county agency.

(b) The county agency shall obtain criminal and other background history for each person described in sub. (2)(intro.)

(3) FALSE INFORMATION PENALTIES In addition to the statutory penalty, a person who knowingly and intentionally provides false information or omits information on the department's background information disclosure form, 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 department's form, may be subject to additional sanctions as determined by the agency, including one or more of the following:

(a) Denial or revocation of regulatory approval by the agency.

(b) Denial contract approval or termination of contract by the agency.

(c) Denial of employment or termination of employment by the agency.

(d) Special regulatory conditions or limitations placed upon the person by the agency, including but not limited to restriction to off-premises locations during regulated business hours or restrictions on access to clients.

(e) Requirement for a human services professional assessment that the person is fit and qualified before the person is allowed to be on the premises.

NOTE: Secs. 48.685(6)(c), Stats., provides that a person who provides false information on a background information form may be required to forfeit not more than \$1,000 and may be subject to other sanctions specified by rule.

(4) **CRIMINAL AND OTHER BACKGROUND HISTORY.** The county agency shall obtain the following information for review under subs. (1) and (2):

(a) Records maintained by the department of justice and, if applicable and available, a record search from the records maintained by a native American tribal court.

(b) Information that is contained in the registry under s. 146.40 (4g), Stats., regarding any findings against the person.

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

(d) Information maintained by the department of health and family services regarding any substantiated reports of child abuse or neglect against the person.

(e) Information maintained by the department of health and family services regarding any denial to the person of a license, continuation or renewal of a license, certification, a contract, or permission to be employed by an entity or reside in an entity due to a conviction or a pending charge of a serious crime. If information obtained under this paragraph indicates that the person has been denied a license, continuation or renewal of a license, certification, a contract or permission to be employed by an entity or reside in an entity, the county agency need not obtain the information specified in pars. (a) to (d).

(5) **OUT-OF-STATE INFORMATION.** If the person who is the subject of a criminal and background history search is not a resident of this state, or was not a resident of this state at any time within the previous three years, the agency shall make a good faith effort to obtain information equivalent to the information specified in sub. (4)(a) from the state or country where the person was a resident during the previous three years.

(6) TIMING OF SEARCHES; FEES; FILES. (a) The county agency shall request the information specified in sub. (4)(a) to (e) for all persons who are subject to criminal and background history search every four years or at any time within that period that the agency considers to be appropriate.

(b) The county agency may charge a fee for obtaining the information required under sub. (4)(a) to (e). The fee may not exceed the reasonable cost of obtaining the information.

(c) The agency shall maintain on file the most recent information gathered under sub. (4)(a) to (e), in compliance with applicable confidentiality requirements.

(7) CRIMINAL AND OTHER BACKGROUND HISTORY PENALTIES. In addition to the penalty specified under s. 48.685(4), an entity that violates the requirements of s. 48.685(2) or (3) may be subject to the penalties specified in sub. (3)(a) to (e).

NOTE: Secs. 48.685(4), Stats., provides that an entity that violates s. 48.685(2) or (3) may be required to forfeit not more than \$1,000 and may be subject to other sanctions specified by rule.

(8) ELIGIBILITY CRITERIA FOR EXISTING ENTITIES, EMPLOYEES, CONTRACTED PERSONS OR PERSONS RESIDING AT AN ENTITY. An agency need not bar and may continue the regulatory approval of an entity and 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 and if a favorable rehabilitation review decision has been reached by the agency and all of the following are met:

(a) 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.

(b) Except for sub. (4)(b)7. and 8., the person must show that he or she is otherwise eligible for rehabilitation review under sub. (4)(c).

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

(d) 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.

SECTION 13. DWD 55.11 is created to read:

DWD 55.11 Crimes tables - incorporation by reference. Tables A, B, C and D of s. HFS 12.11 are incorporated by reference as Table DWD 55, for use in making determinations under ss. DWD 55.04 and 55.05.

NOTE: A copy of the crimes tables may be obtained by calling the Office of Child Care at (608) 266-9703 or by sending a written request to the Office of Child Care at P.O. Box 7935, Madison WI 53707. In addition, the tables are posted by the Department of Health and Family Services at the following web site address:

http://www.dhfs.state.wi.us/reg_licens/caregiver/cgindex.html

EFFECTIVE DATE. This emergency rule shall take effect upon publication in accordance with sec. 227.24, Stats.

(End)

ORDER OF ADOPTION

Pursuant to authority vested in the Department of Workforce Development by section(s)

49.22 (2m)(d), 49.853 (1)(dm), 49.854 (17), 49.858 (2), and 767.027 (2),

Stats., the Department of Workforce Development creates; amends;

repeals and recreates; repeals and adopts rules of Wisconsin Administrative Code chapter(s):

DWD 43

(Number)

Child Support Administrative Enforcement

(Title)

The attached rules shall take effect on October 1, 1998, pursuant to section 227.24, Stats.

Adopted at Madison, Wisconsin this

date: September 25, 1998.

DEPARTMENT OF WORKFORCE DEVELOPMENT

Judith Stewart
Secretary

RULES CERTIFICATE

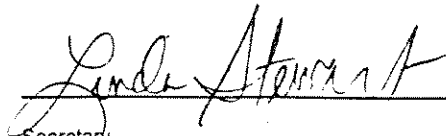
STATE OF WISCONSIN)
) SS
DEPARTMENT OF)
WORKFORCE DEVELOPMENT)

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Linda Stewart, Secretary of the Department of Workforce Development, and custodian of the official records of said department, do hereby certify that the annexed rule relating to the child support administrative enforcement was duly approved and adopted by this department on September 25th, 1998.

I further certify that said copy has been compared by me with the original on file in the department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the department at 1 p.m. in the city of Madison, this 25th day of September, 1998.



Secretary

Tommy G. Thompson
Governor

Linda Stewart
Secretary



State of Wisconsin

Department of Workforce Development

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Suite 800
131 W. Wilson St.
Madison, Wisconsin 53703-3233

Douglas LaFollette
Secretary of State
10th Floor
30 West Mifflin Street
Madison, Wisconsin 53703

Dear Messrs. Poulson and LaFollette:

TRANSMITTAL OF RULE ADOPTION

CLEARINGHOUSE RULE NO.: Emergency Rule
RULE NO.: DWD 43, Wis. Adm. Code
RELATING TO: Child Support Administrative Enforcement

Pursuant to section 227.20, Stats., agencies are required to file a certified copy of every rule adopted by the agency with the offices of the Secretary of State and the Revisor of Statutes.

At this time, the following material is being submitted to you:

1. Order of Adoption.
2. Rules Certificate Form.
3. Rules in Final Draft Form.

Pursuant to section 227.114, Stats., a summary of the final regulatory flexibility analysis is included for permanent rules. A fiscal estimate and fiscal estimate worksheet is included with an emergency rule.

Respectfully submitted,

A handwritten signature in cursive script that reads "Linda Stewart".

Linda Stewart
Secretary



Original Updated
 Corrected Supplemental

LRB or Bill No. - Adm. Rule No.
DWD 43 -

FISCAL ESTIMATE
DOA-2048 N(R10/94)

Amendment No. if Applicable

Subject
CHILD SUPPORT - GENERAL

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 Government 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 rule implements various provisions of 1997 Wisconsin Act 191, related to the child support enforcement program including forfeitures for failing to comply with a subpoena, liens, and notice and service of process requirements.

Counties may realize cost savings by switching to mailing of notices of administrative enforcement instead of using service of process. The amount of savings cannot be determined at this time. Although the \$25 forfeiture for noncompliance with administrative subpoenas and requests for information may be imposed in a few cases, the amount of revenue generated is expected to be minimal. Local postage costs for liens are expected to be offset by the new enforcement tool. Agency workload may increase due to requests for financial records and court order review, however, these costs can be absorbed.

Long-Range Fiscal Implications

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

DWD / Nikolay, Bob (266-9475)

Authorized Signature/Telephone No.

Handwritten Signature 266-9427

Date

9/25/98

Fiscal Estimate Worksheet

Detailed Estimate of Annual Fiscal Effect
DOA-2047(R10/94)

Original Updated
 Corrected Supplemental

LRB or Bill No./Adm Rule No.
DWD 43 /

Amendment No.

Subject
CHILD SUPPORT - GENERAL

I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):
Postage cost of \$69,000 for one-time mailing of approximately 152,500 pieces.

II. Annualize Costs:	Annualized Fiscal Impact on Stated funds from:	
	Increased Costs	Decreased Costs
A. State Costs (by Category)		
State Operations - Salaries & Fringes	\$0	- \$0
(FTE Position Changes)	(FTE)	(- FTE)
State Operations - Other Costs	\$0	- \$0
Local Assistance	\$0	- \$0
Aids to Individuals or Organizations	\$0	- \$0
TOTAL State Costs by Category	\$0	- \$0
B. State Costs (by Fund Source)	Increased Costs	Decreased Costs
GPR:	\$0	- \$0
FED:	\$0	- \$0
PRO/PRS:	\$0	- \$0
SEG/SEG-S:	\$0	- \$0
II. State Revenues - Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Rev.	Decreased Rev.
GPR Taxes:	\$0	- \$0
GPR Earned:	\$0	- \$0
FED:	\$0	- \$0
PRO/PRS:	\$0	- \$0
SEG/SEG-S:	\$0	- \$0
TOTAL State Revenues:	\$0	- \$0

Net Annualized Fiscal Impact

	State	Local
Net Change in Costs:	\$0	\$0
Net Change in Revenues:	\$0	\$0

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

DWD / Nikolay, Bob (266-9475)

Authorized Signature Telephone No.

David Gerstein 266-9427

Date

9/25/98

State of Wisconsin
Department of Workforce Development

EMERGENCY RULE

DWD 43

CHILD SUPPORT ADMINISTRATIVE ENFORCEMENT

The Wisconsin Department of Workforce Development proposes an order to renumber chs. HSS 80 to 82 as DWD 40 to 42, and to create ch. DWD 43, relating to child support administrative enforcement.

Finding of Emergency

The Department of Workforce Development finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, health, safety and welfare. A statement of the facts constituting the emergency is:

As described in the analysis below, state and federal legislation has created new procedures for the administrative enforcement of child support obligations. To place the new procedures into effect, the Department of Workforce Development has scheduled public hearings on a proposed permanent rule during the month of October, 1998. While the permanent rulemaking process proceeds, DWD is adopting the provisions in the current draft as an emergency rule so that county child support agencies will be able to utilize the new statutory enforcement and collection procedures for the benefit of custodial parents as soon as possible.

Analysis

Authority for rule. Secs. 49.22 (2m)(d), 49.853 (1)(dm), 49.854 (17), 49.858 (2), and 767.027 (2), Stats.

Statutes interpreted. Secs. 49.22, 49.853, 49.854, 49.858 and 767.027, Stats.

Summary. In compliance with the child support enforcement requirements in the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193), 1997 Wisconsin Act 191 became effective May 1, 1998. The Act expands the authority of the Department of Workforce Development and county child support agencies to establish and acknowledge paternity, and to enforce child support orders. The Act requires the promulgation of administrative rules before the Department may begin implementing several provisions in the Act. These are the proposed rules for the implementation of 1997 Wisconsin Act 191.

According to the Act, past-due support constitutes a lien against all of a child support payer's real and personal property. Child support liens will be placed on the child support lien docket and electronically delivered to the county registers of deeds. The rule describes the threshold that arrears in a court case must equal or exceed before a payer is placed on the child support lien docket, the calculation of the lien amount, the filing date of the lien, and lien payments.

To enforce a lien, the Department or child support agency may use administrative enforcement actions authorized in Act 191. These administrative remedies include suspending and denying professional, occupational, recreational, and driver licenses; seizing real and personal property, including financial accounts; and intercepting judgments, settlements, and lump-sum pension payments. The Department or child support agency may initiate these administrative remedies if arrears owed by a payer in a court case equal or exceed a threshold. For each administrative enforcement action, the rule defines the threshold that arrears in a court case must equal or exceed before the Department or child support agency may initiate that action. Generally, that threshold for license suspension and account seizure is 300% of the monthly amount due, and the threshold for real and personal property seizure is 600% of the monthly amount due.

In addition to considering the arrears in a court case, when considering property seizure as an administrative remedy, the Department or child support agency must determine whether property identified for seizure has sufficient value before initiating any seizure process. The rule specifies the factors that must be considered when determining the value of the property, and the amount that the property value must exceed before seizure may be initiated. In general, the funds in a financial account must exceed \$500, the payer's equity in personal property must exceed \$100, and the payer's equity in real property must exceed 10 percent of the property's fair market value, before the Department or child support agency may seize the property.

Child support payers have an opportunity to negotiate alternative payment plans to suspend the execution of administrative enforcement actions. The rule outlines the process for negotiating payment plans, the factors that must be considered when establishing payment plans, and the possible terms and conditions of payment plans. The rule also defines noncompliance with a payment plan, and provides payers with an opportunity to renegotiate payment plans.

Notice of lien and administrative enforcement actions may be provided by regular mail to the last-known address of a child support payer. According to Act 191, notice requirements are met if notice of lien or administrative enforcement action has been sent to the last-known address provided by the payer, and a diligent effort has been made to ascertain the location of the payer. The rule outlines the process the department and child support agency will use to verify and obtain an address from a postmaster, and the diligent efforts that will be taken to obtain the current address of a payer.

The rule describes the circumstances in which a payee will be notified that an administrative enforcement action has been initiated against the payer. In general, these are circumstances in which the Department or the child support agency is aware that the payer is subject to a

protective order or there is otherwise reason to believe that a payee or child may be harmed physically or emotionally by the payer.

The Department and the child support agencies have the authority to request from any person information that they determine necessary for administering the child support program. Act 191 gives the Department and child support agencies additional authority to issue administrative subpoenas to obtain financial information and other documentation necessary for child support administration. Under the Act, the Department or child support agency may require individuals or entities to pay an administrative forfeiture for failure to comply with an administrative subpoena or a request for information. The rule specifies the administrative forfeiture that may be imposed for failure to comply with an administrative subpoena or a request for information, and when the administrative forfeiture may be imposed. Generally, an administrative forfeiture for a failure to comply will not exceed \$25, but if the failure to comply is the result of intentional conduct by the subpoena respondent to hide information, falsify information, or provide incomplete information, the administrative forfeiture will equal \$500.

The Department's goal is to begin implementation of these provisions in 1999.

SECTION 1. Chs. HSS 80 to 82 are renumbered chs. DWD 40 to 42.

SECTION 2. Chapter DWD 43 is created to read:

DWD 43
CHILD SUPPORT ADMINISTRATIVE ENFORCEMENT

DWD 43.01 Authority and purpose. This chapter is promulgated under the authority of ss. 49.22 (2m)(d), 49.853 (1)(dm), 49.854 (17), 49.858 (2), and 767.027 (2), Stats., for the purpose of administering the child support program under s. 49.22, Stats.

DWD 43.02 Applicability. This chapter applies to the department and county child support agencies under s. 59.53 (5), Stats., individuals participating in the child support program under s. 49.22, Stats., and persons subject to administrative subpoenas issued in accordance with s. 49.22 (2m)(b), Stats., or requests for information issued in accordance with s. 49.22 (2m)(a), Stats.

DWD 43.03 Definitions. In this chapter:

- (1) "Account" has the meaning given in s. 49.853 (1)(a), Stats.
- (2) "Administrative enforcement" means the department or a child support agency:
 - (a) Puts child support liens into effect by placing them on the child support lien docket and electronically delivers the docket to the county registers of deeds.
 - (b) Receives proceeds from the sale of property when there is a child support lien against the property, and either the payer has transferred the property or the property has been seized and sold by an entity other than the department or a child support agency.
 - (c) Takes any administrative enforcement action.
- (3) "Administrative enforcement action" means any of the following actions taken by the Department or child support agency to enforce a lien: (a) the intercept of lump-sum pension payments in accordance with s. 49.852, Stats.; (b) the seizure of accounts at financial institutions in accordance with s. 49.854(5), Stats.; (c) the seizure of personal property in accordance with s. 49.854(6), Stats.; (d) the seizure of real property in accordance with s. 49.854(7), Stats.; (e) the intercept of judgments and settlements in accordance with s. 49.856, Stats.; and (f) the denial, nonrenewal, restriction, or suspension of professional, occupational, recreational, or driver licenses for failure to pay support in accordance with s. 49.858, Stats.
- (4) "Alternative payment plan" or "plan" means a negotiated agreement between a child support agency and a payer, or a plan set by the court, which establishes terms for the payment of the arrearage debt.
- (5) "Arrearage debt" means the sum of child support arrears, maintenance arrears, family support arrears, missed payments on past support, missed payments on lying-in costs, and

missed payments on other medical support including missed lump-sum payments for medical support in a court case.

(6) "Child support agency" or "agency" means the county child support agency under s. 59.53 (5), Stats.

(7) "Child support lien" or "lien" means an administrative lien that arises by operation of law against all of a payer's real and personal property when he or she owes an arrearage debt.

(8) "Department" means the Wisconsin Department of Workforce Development.

(9) "Equity" means the fair market value minus the liens on that property with priority over the child support lien.

(10) "Expected monthly amount due," for a court-ordered provision expressed only as a percentage of income, equals the identified monthly income multiplied by the percentage ordered for the provision. To determine a payer's identified monthly income, a child support agency shall use the best available information which includes, but is not limited to, the income of the payer during the period of the most recent reconciliation, income information reported by the payer's employer under s. 767.265(3h), Stats., information provided verbally or in writing to the child support agency by the payer, or tax returns or records.

(11) "Failure to comply with an administrative subpoena or a request for information" means that the subpoena respondent did not provide the requested information within seven days after receiving the administrative subpoena or request for information, or that the subpoena respondent provided false or incomplete information.

(12) "Financial institution" or "institution" has the meaning given in s. 49.853 (1)(c), Stats.

(13) "Gross income" has the meaning given in s. DWD 40.02 (13) [formerly HSS 80.02 (13)].

(14) "Lien-eligible amount" means the amount in a court case that is eligible to be placed on the lien docket.

(15) "Monthly amount due" is the sum of all court-ordered provisions for periodic payments due in one month in a court case including arrearage debts.

(16) "Monthly charge" is the sum of court-ordered provisions for monthly payments on child support, family support, maintenance, lying-in costs, past support, and other medical support in a court case. The monthly charge does not include court-ordered provisions for periodic payments on arrearage debts.

(17) "Ownership interest" is defined as any personal financial interest.

NOTE: This definition applies to the financial record matching program under sec. 49.853(3) and (4), Stats.

(18) "Payee" has the meaning given in s. DWD 40.02 (22) [formerly HSS 80.02 (22)].

(19) "Payer" has the meaning given in s. DWD 40.02 (23) [formerly HSS 80.02 (23)].

(20) "Property" has the meaning given in s. 49.854 (1)(e), Stats.

(21) "Subpoena respondent" means the person from whom information is requested in an administrative subpoena or request for information.

(22) "Threshold" is an amount, expressed as either a percentage of the monthly amount due, a fixed dollar amount, or both, that the lien-eligible amount or lien amount must equal or exceed before administrative enforcement may be used in a court case.

DWD 43.04 Written notice of enforcement actions. (1) APPLICATION. This section applies to notices issued to the payer by the department under ss. 49.852 (2), 49.854

(3)(a) and (ag), 49.854 (5)(d), 49.854 (6)(a), (d), and (e), 49.854 (7)(a), (d), and (e), 49.856 (3), and 49.857 (3)(a), (am), and (b), Stats.

(2) USE OF MAIL. The department or child support agency may send notices related to the administrative enforcement of a child support order by regular mail to the last-known mailing address provided by the payer under s. 767.263 (2), Stats. If the last-known mailing address for a payer is unverified, or a written notice sent to a payer at his or her last-known verified mailing address is returned, the department or child support agency shall contact the postmaster of the zip code of the address. If the postmaster verifies the unverified mailing address or provides a new verified address, the department or county child support agency shall send written notice to the mailing address provided by the postmaster. If the postmaster is unable to verify the last-known mailing address, or provide a new verified address, the department or child support agency shall send notice to the current employer mailing address provided by the payer under s. 767.263 (2), Stats. If notice to the employer is returned, or the payer has not provided a current employer mailing address, the department or child support agency shall use diligent effort to obtain a mailing address for the payer.

NOTE: Under sec. 767.263 (2), Stats., each party to a child support order is required to provide the child support agency with his or her residential and mailing address and the address and telephone number of his or her employer. A party shall advise the child support agency of any change in such information within 10 business days after the change.

(3) DILIGENT EFFORT. Diligent effort means the following for each administrative enforcement action:

(a) License suspension and denial. To obtain and use the payer's address of record at a state licensing agency to provide notice under ss. 49.857 (3)(a), (am), and (b), Stats.

(b) Account seizure. To obtain and use the payer's address of record at a financial institution to provide notice under s. 49.854 (5) (d), Stats.

(c) Personal property seizure. To obtain and use the payer's address of record at a state agency that titles personal property to provide notice under ss. 49.854 (6)(a), (d), and (e), Stats., if the personal property subject to seizure is titled.

(d) Real property seizure. To obtain and use the payer's address of record on the tax bill for the property subject to seizure to provide notice under ss. 49.854 (7)(a), (d), and (e), Stats.

(e) Pension intercept. To obtain and use the payer's address of record at the entity administering a pension plan to provide notice under s. 49.852 (2), Stats.

(f) Judgment and settlement intercept. To obtain and use the payer's address of record with the judgment debtor to provide notice under s. 49.856 (3), Stats.

(4) LOCATE RESOURCES. When the department or a child support agency sends a notice and the notice is returned, the department or a child support agency shall use all appropriate automated federal, state, and local locate resources and interfaces to ascertain a payer's current mailing address.

(5) NOTICE TO JOINT-PROPERTY HOLDERS. The department or child support agency shall provide notice related to the seizure of property to any joint-property holder as follows:

(a) Account seizure. Notice under s. 49.854 (5)(d), Stats., shall be sent to the address of record at the financial institution.

(b) Personal property seizure. Notice under s. 49.854 (6)(a), Stats., shall be sent to the address of record at a state agency that titles personal property if the personal property subject to seizure is titled.

(c) Real property seizure. Notice under ss. 49.854 (7)(a) and (e), Stats., shall be sent to the address of record on the tax bill for the property subject to seizure.

NOTE: Pursuant to s. 49.854 (5)(d), (6)(a), and (7)(a) and (e), Stats., the department or child support agency is required to provide a notice to any person with an ownership interest in a property subject to seizure. The joint-property holder has 20 business days after the date of the notice to request a hearing to protect the portion of the property that is attributable to his or her net contributions to the property.

DWD 43.05 Administrative forfeitures for noncompliance with administrative

subpoenas and requests for information. (1) MAXIMUM ADMINISTRATIVE

FORFEITURES. The department or a child support agency may require a subpoena respondent who fails to comply with an administrative subpoena issued in accordance with s. 49.22(2m)(b), Stats., or a request for information made under s. 49.22(2m)(a), Stats., to pay an administrative forfeiture not to exceed \$25. If the failure to comply with an administrative subpoena or request for information is the result of intentional conduct by the subpoena respondent to hide information, falsify information, or provide incomplete information, the department or child support agency may require the subpoena respondent to pay an administrative forfeiture of \$500.

(2) **WHEN IMPOSED.** The department or a child support agency shall determine when it is appropriate to impose an administrative forfeiture for failure to comply with a request for information or an administrative subpoena. In accordance with s. 49.22(2m)(a), Stats., a subpoena respondent who fails to comply with a request for information may not be subject to

administrative forfeiture if access to the requested information is prohibited or restricted by law, or if the subpoena respondent has good cause for refusing to cooperate with the request.

DWD 43.06 Liens. (1) LIEN DOCKET. (a) The department shall maintain a statewide support lien docket in accordance with s. 49.854(2)(b) and (c), Stats. The department shall be responsible for periodically updating the lien docket and providing a copy of the lien docket to the register of deeds and the child support agency in each county.

(b) The department or the child support agency shall be responsible for responding to inquiries concerning information recorded on the lien docket. The county register of deeds may refer any person who has an inquiry about the lien docket to the department or the child support agency.

(2) **WHEN ENTERED.** The department shall place a payer on the lien docket when the lien-eligible amount in one or more of the payer's court cases equals or exceeds the lien threshold. If an individual is a payer in more than one court case, each court case will be evaluated separately to determine whether the lien threshold has been met, and to determine the lien amount.

(3) **DETERMINING THE LIEN-ELIGIBLE AMOUNT.** (a) The lien-eligible amount equals the difference between the monthly charge and the arrearage debt in a court case.

(b) Determining the monthly charge. 1. A court-ordered provision expressed only as a percentage of income shall not be included in the calculation of the monthly charge.

2. For a court-ordered provision requiring only a fixed sum, the monthly charge shall be calculated using the fixed sum amount.

3. For a court-ordered provision requiring the greater or lesser of either a percentage of income or a fixed sum, the monthly charge shall be the calculated using the fixed sum amount.

(4) DETERMINING WHETHER THE LIEN THRESHOLD HAS BEEN MET OR EXCEEDED. (a) The department shall place a payer on the lien docket if the lien-eligible amount in a court case equals or exceeds the monthly amount due or \$500, whichever is greater.

(b) Determining the monthly amount due. 1. A court-ordered provision expressed only as a percentage of income shall not be included in the calculation of the monthly amount due.

2. For a court-ordered provision requiring only a fixed sum, the monthly amount due shall be calculated using the fixed sum amount.

3. For a court-ordered provision requiring the greater or lesser of either a percentage of income or a fixed sum, the monthly amount due shall be the calculated using the fixed sum amount.

(5) LIEN AMOUNT The lien amount on the lien docket shall equal the sum of lien-eligible amounts from the court cases in which the lien-eligible amount meets or exceeds the lien threshold. The lien amount may include court-ordered liens made pursuant to s. 767.30, Stats.

(6) PAYMENT OF LIEN. (a) Any payment toward the lien amount shall:

1. Indicate that the payment is a lien payment.
2. Specify the court case or cases in which the lien arose.

(b) A payment to satisfy a lien shall meet the conditions specified in (a) and be in an amount equal to the lien amount on the child support lien docket.

(c) The child support agency shall distribute any support payment made that does not meet the conditions in par. (a) or (b) in accordance with s. 767.25(6), Stats.

(d) Payments toward a court-ordered lien under s. 767.30, Stats., shall be credited toward the child support lien, if appropriate. Payments toward the child support lien shall be credited toward a court-ordered lien under s. 767.30, Stats., if appropriate.

(7) **FILING DATE.** The filing date on the lien docket is the date that a lien amount was first recorded on the docket for a payer. The filing date does not change if the lien amount is adjusted up or down within five years after the filing date.

(8) **REFILING A LIEN.** (a) At the end of the five year effective period of a lien, the department or a child support agency may refile the lien if the lien-eligible amount equals or exceeds the lien threshold. When a lien is refiled, the date on which the lien is refiled shall become the date of filing on the lien docket, and a new five-year period shall commence.

NOTE: Under sec. 49.854(12)(a), Stats., a child support lien is effective for a period of five years from the filing date.

(b) When a lien is refiled, the department or the child support agency shall send the payer a notice that the lien has been refiled.

NOTE: Upon receiving notice, the payer has the opportunity to request a financial records review and a court review under sec. 49.854(3)(ag), Stats., or a direct appeal for a court review under sec. 49.854(3)(ar), Stats.

DWD 43.07 Financial record review. (1) In accordance with s. 49.853 (3)(ag), Stats., a payer may request a financial records and court order review (financial record review) within 10 business days of the date of the notice of lien. The financial record review will determine the correctness of the financial records in a court case and will cover only the period of time after the last judicial review or other account review.

NOTE: The procedure for a financial records and court order review is specified in sec. 49.854(3)(ag), Stats.

(2) Upon receiving a request for a financial record review, the child support agency shall provide the relevant financial records and information explaining how to interpret the records to the payer.

NOTE: Under sec. 49.854(3)(ag), Stats., the department or child support agency may not charge the payer for providing the payment records or for performing the financial record review.

(3) Within 20 business days after receiving the relevant financial records, the payer shall provide a statement of any alleged error to the child support agency. If the payer provides a statement of alleged error within the time frame, the child support agency shall provide a written determination as to whether the lien against the payer is in the correct amount. The child support agency must provide the written determination within 60 days after the date of the payer's request for a financial record review.

DWD 43.08 Seizure of property. (1) DEPARTMENT'S INITIAL ASSUMPTION AS TO JOINTLY OWNED PROPERTY. When the department or a child support agency acts under s. 49.854, Stats., the department or the child support agency shall initially assume that a payer's ownership interest in property that is jointly owned with one or more other persons is an equal pro rata share based on the number of joint owners. The department or child support agency shall proceed on this basis unless a person requests a hearing under s. 49.854(7m), Stats., in which case the department or child support agency shall be bound by the decision of the family court commissioner or the reviewing court.

(2) SEIZURE OF FINANCIAL ACCOUNTS. (a) *Minimum for seizure.* The department or a child support agency may not seize an account under s. 49.854 (5), Stats., unless the sum of the funds in all of the payer's financial accounts, minus the \$5 levy fee under s.

49.854 (11)(a), Stats., and any early withdrawal penalty under s. 49.854 (5)(e), Stats., exceeds \$500 at the time of seizure.

(b) Amount to be seized. The department or a child support agency may only seize funds in excess of \$500 across all of a payer's accounts. If accounts are jointly-held, and the joint-account holder has requested a hearing under s. 49.854 (7m), Stats., the department or child support agency may not seize any amount that the court determines is attributable to the contributions of the joint-account holder.

(3) SEIZURE OF PERSONAL PROPERTY OTHER THAN FINANCIAL ACCOUNTS. The department or a child support agency may not seize personal property under s. 49.854(6), Stats., unless both of the following conditions are met:

(a) The payer's equity in the property, minus expected levy fees, exceeds \$100.

(b) The lien exceeds \$500.

(4) VALUATION OF JOINTLY-HELD REAL AND PERSONAL PROPERTY. For the purpose of determining whether jointly-held property (other than financial accounts) that is subject to lien has sufficient value to be seized, the department or child support agency shall assume that the payer's equity in the property is the payer's proportionate share of the property's equity.

(5) SEIZURE OF REAL PROPERTY. The department or child support agency may not seize real property under s. 49.854(7), Stats., unless both of the following conditions are met:

(a) The payer's equity in the property, minus expected levy fees, exceeds 10 percent of the property's fair market value.

(b) The lien exceeds \$5,000.

(6) **JOINTLY-HELD PROPERTY AND COURT HEARINGS.** If a financial account, personal property, or real property is jointly held, a person other than the payer may request a hearing under s. 49.854(7m), Stats., for a determination of the proportion of the value of the property that is attributable to his or her net contribution to the property, and may make the request in any county that initiated property seizure. If the joint-property holder does not request a hearing, the department or child support agency shall seize the payer's proportionate share of the property.

DWD 43.09 Notice to the payee of enforcement proceedings. If the child support agency is aware that a payer is subject to a protective order with respect to a payee or child in his or her court case, or the child support agency has reason to believe that a payee or child in a payer's court cases may be harmed physically or emotionally by the payer, the department or the child support agency shall provide written notice to said payee when an administrative enforcement action has been initiated against the payer. The notice to the payee must be provided within 5 business days of the date of the notice sent to the payer in accordance with s. 49.852(2), 49.854(5)(b), 49.854(6)(a), 49.854(7)(a), 49.856(2), or 49.857(3)(a), Stats.

DWD 43.10 Thresholds for administrative enforcement actions. (1) LICENSE SUSPENSION. A child support agency may initiate license suspension if there is a lien against a payer, and the lien amount in the payer's court case equals or exceeds 300 percent of the monthly amount due in the court case.

(2) **ACCOUNT SEIZURE.** A child support agency may initiate account seizure if there is a lien against a payer, and the lien amount in the payer's court case equals or exceeds 300 percent of the monthly amount due in the court case or \$1,000, whichever is greater.

(3) **REAL AND PERSONAL PROPERTY SEIZURE.** A child support agency may initiate real or personal property seizure if there is a lien against a payer, and the lien amount in the payer's court case equals or exceeds 600 percent of the monthly amount due in the court case.

(4) **INTERCEPT OF LUMP-SUM PENSION PAYMENTS, JUDGMENTS, AND SETTLEMENTS.** A child support agency may initiate the intercept of lump-sum pension payments, judgments, and settlements when a payer has been placed on the child support lien docket.

(5) **DETERMINING THE MONTHLY AMOUNT DUE.** (a) For a court-ordered provision expressed only as a percentage of income, the monthly amount due shall be calculated using the expected monthly amount due.

(b) For a court-ordered provision requiring only a fixed sum, the monthly amount due shall be calculated using the fixed sum amount.

(c) For a court-ordered provision requiring the greater or lesser of either a percentage of income or a fixed sum, the monthly amount due shall be the calculated using the fixed sum amount.

DWD 43.11 Alternative Payment Plans. (1) **APPLICABILITY OF ALTERNATIVE PAYMENT PLANS.** When the department or a child support agency enforces a lien through seizure of real property or personal property, seizure of financial accounts, or denial, suspension, nonrenewal, restriction, or suspension of licenses, the payer may negotiate an alternative payment plan with the child support agency.

(2) NEGOTIATION OF AN ALTERNATIVE PAYMENT PLAN AFTER RECEIVING NOTICE OF AN ADMINISTRATIVE ENFORCEMENT ACTION. (a) The notices issued under ss. 49.854(5)(b), 49.854(6)(a), 49.854(7)(a), or 49.857(3)(a) or (am), Stats., shall inform the payer of the opportunity to negotiate an alternative payment plan, and shall notify the payer of the circumstances under which the payer may request a court hearing on mistake of fact and on the reasonableness of the plan.

NOTE: Under ss. 49.854 (5)(d), (6)(b), and (7)(b), and ss. 49.857(3)(a) and (am), notices must inform the payer of his or her opportunity to request a hearing within 20 business days after the date of the notice.

(b) A payer may submit a written request to the child support agency to negotiate an alternative payment plan within 10 business days after the date of notice under ss. 49.854(5)(b), 49.854(6)(a), 49.854(7)(a), or 49.857(3)(a) or (am), Stats. The payer may submit a written request for a court hearing on the reasonableness of the plan within 20 business days after the date of notice under ss. 49.854(5)(b), 49.854(6)(a), 49.854(7)(a), or 49.857 (3)(a) or (am), Stats.

(c) If the child support agency and the payer are unable to reach agreement on the terms of a plan, and the payer requested a court hearing within 20 business days after the date of notice under ss. 49.854(5)(b), 49.854(6)(a), 49.854(7)(a), or 49.857 (3)(a) or (am), Stats., a hearing will be conducted. If the court determines that the plan is not reasonable, it may establish a plan by setting payments pursuant to s. 767.30 (1), Stats.

(3) NEGOTIATION OF AN ALTERNATIVE PAYMENT PLAN AFTER COURT DETERMINATION ON MISTAKE OF FACT. If a court determines that a payer owes arrears as a result of a review of mistake of fact under ss. 49.854(5)(f), 49.854(6)(c), 49.854(7)(c), or

49.857(3)(ac) or (ar), Stats., and the payer did not attempt to negotiate a plan prior to the court review, the payer may, within 10 business days of the court determination, submit a written request to the child support agency to negotiate a plan.

(4) **NEGOTIATION OF AN ALTERNATIVE PAYMENT PLAN AFTER THE RESTRICTION, LIMITATION, SUSPENSION OR REFUSAL OF A LICENSE.** Pursuant to s. 49.857 (3)(d)1., Stats., a payer may negotiate a plan with the department or child support agency to have a license issued or renewed after it has been restricted, limited, suspended or refused.

(5) **STAYING ADMINISTRATIVE ENFORCEMENT ACTIONS.** Administrative enforcement actions shall be stayed by the child support agency that initiated an action while the payer and the agency are negotiating a plan, or, if a court review of the reasonableness of the plan is requested, until the court determination has been made. To stay an administrative enforcement action means the following:

(a) License suspension and denial. The payer shall not be certified to state licensing agencies for denial, nonrenewal, restriction, or suspension of professional, occupational, recreational, or driver licenses.

(b) Account seizure. Any financial accounts frozen under s. 49.854(5)(b), Stats., shall remain frozen and shall not be seized.

(c) Personal property seizure. Personal property that has been seized under s. 49.854 (6), Stats., shall be held by the department or the sheriff and shall not be sold.

(d) Real property seizure. Real property shall not be seized and sold.

(6) SUSPENSION OF ADMINISTRATIVE ENFORCEMENT ACTIONS. (a) When a plan has been negotiated between the payer and the child support agency, or the court has determined that a plan is reasonable or has established a plan pursuant to s. 767.30 (1), Stats., the child support agency in the county in which the plan is set shall suspend administrative enforcement actions as long as the payer complies with the plan.

(b) If a payer makes a full arrearage debt payment, prior to the completion of the administrative enforcement action, the action will be suspended.

(7) PROCEEDING WITH ADMINISTRATIVE ENFORCEMENT ACTIONS. If the court determines under (2)(c) that a plan is not reasonable and does not set a plan, or the payer and child support agency are unable to negotiate a plan under (3), the child support agency may continue with the administrative enforcement action.

(8) DISCLOSURE OF INCOME AND ASSETS. The request to negotiate a plan shall include an agreement by the payer to provide the child support agency with a full disclosure of income and assets available. The payer must provide complete income and assets information to the child support agency within 5 business days of the request to negotiate a payment plan.

(9) CASE-BY-CASE BASIS. A child support agency shall negotiate a plan with a payer only on cases venued in its county.

(10) TERMS OF AN ALTERNATIVE PAYMENT PLAN. (a) An alternative payment plan may include a lump-sum payment, or periodic payments on the arrearage debt, or both, subject to the following standards:

1. Any periodic payment established under the plan, when combined with any other court-ordered payment of support, may not decrease the payer's gross income to an amount

below 100% of the poverty line established under 42 U.S.C. 9902 (2) unless the payer agrees otherwise.

2. When establishing an alternative payment plan, the child support agency shall consider the factors used by the court in determining whether the use of the percentage standard is unfair to the child or any of the parties, as specified in s. 46.10(14), 767.25 , or 767.51, Stats.

(b) In a case in which it is not possible to establish a periodic payment plan without reducing a payer's gross income to below the poverty line, the child support agency is not prohibited from negotiating a lump-sum payment with the payer, and may elect to suspend administrative enforcement action.

(c) Upon agreement by the payer, periodic payments under the plan may be made through income withholding in amounts in addition to the amount ordered under s. 767.265 (1).

(11) **DEFAULT ON AN ALTERNATIVE PAYMENT PLAN.** In the event that the payer defaults on the plan by failure either to make the full lump-sum payment within one month of the date that the payment is due, or to pay an amount equal to the amount due in one month under the plan, the child support agency shall notify the payer that an administrative enforcement action shall be implemented unless the lien is paid in full.

(12) **RENEGOTIATION OF AN ALTERNATIVE PAYMENT PLAN.** After the entry of an alternative payment plan, the plan may be renegotiated upon the written request of the payer or child support agency if the requesting party can show a substantial change in circumstances. A substantial change in circumstances includes, but is not limited to, the following:

(a) A change in the payer's income or assets, including the sale or purchase of real or personal property.

(b) A change in the payer's earning capacity.

(c) Any other factor that the child support agency determines is relevant.

(13) PAYERS WITH COURT CASES IN MULTIPLE COUNTIES. (a) When multiple counties initiate administrative enforcement actions against the same payer, and the payer negotiates an alternative payment plan in one of the initiating counties, the plan does not preclude any other county from proceeding with its administrative enforcement action.

(b) If a county which has a lien against a payer negotiates an alternative payment plan with the payer, the county is not precluded from receiving proceeds from the sale of the payer's real or personal property under the lien including, but not limited to, proceeds from administrative enforcement actions taken by other counties.

EFFECTIVE DATE. This emergency rule shall take effect upon publication in accordance with sec. 227.24, Stats.

(End)