

RULES CLEARINGHOUSE

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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 98-204

AN ORDER to repeal HFS 55.80 and 55.81; to renumber HFS 55.55 to 55.62; to 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) and 55.08 (3); to repeal and recreate DWD 55.02 (1) and 55.05; and to create DWD 55.02 (3m), (4f), (4m), (5m), (12m) and (17m), 55.04 (9), 55.08 (2) (n) and (5) (i), 55.09 (5) (g) and (6) (f), 55.10 and 55.11, relating to criminal record background checks for certified day care operators, employes and contractors of certified day care operators and nonclient residents at certified day care locations.

Submitted by **DEPARTMENT OF WORKFORCE DEVELOPMENT**

12-14-98 RECEIVED BY LEGISLATIVE COUNCIL.

01-15-99 REPORT SENT TO AGENCY.

RNS:RJC:kjf;ksm

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

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CLEARINGHOUSE RULE 98-204

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.]

1. Statutory Authority

a. The provisions of the rule relating to criminal history background checks seem curiously placed. Section 48.685, Stats., places oversight of the criminal history and child abuse record search within the purview of the Department of Health and Family Services (DHFS). It is not clear why the Department of Workforce Development (DWD) is promulgating these rules as certification criteria. It appears that DHFS has the statutory authority to apply its rules on criminal history and child abuse records searches to certified day care providers. [See, e.g., s. 48.685 (2) (a), Stats.] In addition, it is clearly contemplated in the statutes that certified day care providers would have to meet the certification standard established by DWD and the criminal history and child abuse record search provisions within the purview of DHFS. [See s. 48.651 (1) (intro.), Stats.]

Promulgation of this rule will only unnecessarily duplicate the extensive rule being promulgated by DHFS. It is suggested that to avoid such duplication, the DHFS rule be expanded to cover certified day care providers and this rule be amended to simply cross-reference the DHFS rules as being applicable to certified day care providers and associated persons.

b. In light of the above comment, it is apparent that s. DWD 55.10 (4) is being promulgated without statutory authority. Section 48.685 (6) (c), Stats., provides that a person who provides false information may be subject to the statutory penalty or other sanctions

specified “by the department by rule.” However, the “department” referred to in the statute is DHFS, not DWD.

2. Form, Style and Placement in Administrative Code

a. SECTION 1 of the rule purports to renumber ss. HFS 55.55 to 55.62 as DWD 55.01 to 55.08. However, based on the content of the rule, the numerous cross-references to s. DWD 55.09 and the number of sections that occur between current ss. HFS 55.55 to 55.62, the renumbering is insufficient and should instead go to s. DWD 55.09. If something different is intended, then the rule should be reviewed to correct all of the cross-references to s. DWD 55.09.

b. SECTIONS 1 and 2 of the rule, which affect rules with an HFS prefix, should follow the SECTIONS that affect rules with a DWD prefix.

c. The rule should be reviewed to make sure that solid lines are used consistently throughout for underscores and strike-throughs. For example, the amendment in s. DWD 55.02 (4) appears to be underscored by a broken line, not a solid one.

d. In SECTION 13 of the rule, it appears that nearly all of the existing provisions being amended have titles. The titles should be shown in SECTION 13. [See s. 1.05 (3) (c), Manual.]

e. Reference is made in s. DWD 55.04 (3) (d) 2. to “the department of health and family services.” Should the rule instead refer to “the department,” so that DWD is the agency referred to?

f. In s. DWD 55.04 (5) (a) and (b), the parenthetical references should be avoided. [See s. 1.01 (6), Manual.] The terms could be defined in the definitions section or a note could be added which further identifies the parenthetical terms.

g. It is inappropriate drafting style to renumber s. HFS 55.59 to become s. DWD 55.05 and then, in SECTION 15, repeal and recreate s. DWD 55.05. The rule should repeal s. HFS 55.59 and create s. DWD 55.05.

h. In s. DWD 55.05 (2) (intro.), the phrase “with an employe, a contractor or a nonclient resident” should be deleted as the term “covered transaction” is defined in the definitions provision in the rule.

i. In s. DWD 55.05 (6) (f) 3. b., “may” should replace “has the right to.”

j. In s. DWD 55.05 (7) (b) (intro.), the introductory material should end with a colon rather than a period. Also, the format of subds. 1. to 3. is problematic. If the first two words in each subdivision are a title, they should be drafted in proper form, i.e., they should be in single quotation marks. [See s. 1.05 (2) (e), Manual.] In addition, the remainder of the material in each subdivision should be either drafted as complete sentences or separated into individual subdivision paragraph lists.

k. Because s. DWD 55.08 (3) contains a title, the title should be shown when the provision is amended. [See s. 1.05 (3) (c), Manual.]

l. Section DWD 55.10 (1) (intro.) should be changed to sub. (1) (a). Accordingly, pars. (a) and (b) should be renumbered pars. (b) and (c), respectively. Also, the references to “sub. (1) (intro.)” should be changed to refer to “par. (a).” This comment also applies to the provisions in sub. (2). A similar change is needed in s. DWD 55.05 (6) (intro.).

m. In s. DWD 55.10 (3) (a), “offense” is misspelled.

n. The creation of the “crimes table” in s. DWD 55.11 raises several issues. First, s. DWD 55.11 (1) indicates that the purpose of the table is to provide the list required by s. 48.685 (7) (a) and (b), Stats. However, that statutory section requires DHFS to promulgate the relevant lists, not DWD. Thus, the purpose statement lacks accuracy. Second, the section lacks a sub. (2). [See s. 1.03 (intro.), Manual.] Third, if the crimes list produced in s. DWD 55.11 is to be interpreted in a manner consistent with the crimes list established in Appendix A to s. HFS 12.11, which has not yet been promulgated as a permanent rule, why not just include a cross-reference to that list rather than repeat the whole list in this rule? This would avoid duplicating an existing rule and would eliminate the need to change the list whenever DHFS changes its list. Finally, if a table is going to be used, it should be clearly designated and created as Table 55.11 rather than folded in with a substantive provision of the rule. It may also be advisable, if it is deemed necessary to include a crimes list, to create the list as an appendix to the rule rather than a table.

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

a. Section DWD 55.02 (5m) refers to a provider certified under s. 48.65, Stats. That statutory section, however, relates to licensed providers. Perhaps the cross-reference should be to s. 48.651, Stats.

b. In s. DWD 55.04 (9) (a) 6., and elsewhere throughout the rule, reference is made to Table DWD 55. A more adequate and complete cross-reference is necessary. See comment 2. i.

c. In s. DWD 55.04 (9) (b), a county agency must “ensure appropriate precautionary measures” are taken. Are there examples somewhere in the rule of what these measures are? An appropriate cross-reference should be provided to better guide county agencies in taking this action. Also, the last sentence of par. (b) starts with the word “This.” What is “This” referring to? Is the delay in issuance of a certification one of the appropriate precautionary measures or is it a result of the precautionary measures?

d. In s. DWD 55.05 (6) (e) (intro.), the rule refers to “the department’s review procedures.” What are these procedures? An appropriate cross-reference to these procedures should be provided.

e. The “statutory penalty” referred to in s. DWD 55.10 (4) (intro.) should to be identified with a cross-reference to the actual statutory provision. The note can explain the

statutory penalty, as it does. In par. (d), the phrase “but not limited to” is unnecessary and should be deleted. In par. (e), the phrase “that the” after the word “assessment” should be changed to “to determine if the.” Also, what must the person be “fit and qualified” for? The rule should be clarified.

f. It appears that the cross-references in s. DWD 55.10 (10) (b) are incorrect. Section DWD 55.10 (4) (b) 7. and 8. do not exist and sub. (4) (c) does not appear to relate to rehabilitation reviews. The cross-references should be reviewed.

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

a. In s. DWD 55.02 (4m) (a), it is not clear how a “person acting” as an operator would be considered a “covered transaction.” Is it the person’s “acting” that makes it a transaction? Generally, a transaction involves more than one person. Perhaps the “covered transaction” occurs when the person acting as an operator takes in clients? The meaning of par. (a) should be clarified.

b. Section DWD 55.03 (2) (c) refers to both “W-2” and a “W-2 agency.” However, neither of these terms are defined in the rule. They should be.

c. In s. DWD 55.04 (9) (a) 4., it appears that the phrase “or sexual” should be inserted between the words “contact intercourse.”

d. In s. DWD 55.04 (9) (c), it appears that the phrase “the county agency may employ” in the first sentence should be changed to “the certified operator may employ.” In the second sentence after the phrase “receipt and review,” one of the occurrences of the phrase “of the” should be deleted.

e. In s. DWD 55.05 (6) (a), the phrase “with the burden of proof” in the last sentence should be deleted.

f. In s. DWD 55.05 (6) (f) 3. a., it appears that both uses of the term “county department” should be changed to “agency” or “county agency.”

g. Section DWD 55.05 (6) (f) 4. is somewhat awkwardly drafted. Perhaps the last part of it could be rewritten as follows: “the rehabilitation review decision, including a copy of the written decision and any decisions from filed appeals that may result.”

h. In s. DWD 55.05 (6) (g) (intro.), the phrase “one or more” should be deleted. Also, in subd. 3., it appears that the word “pertinent” can be deleted because it is rendered redundant by the word “relevant.”

i. In s. DWD 55.05 (6) (h), the phrase “as applicable” in the second sentence appears unnecessary and should be deleted.

j. In s. DWD 55.05 (6) (i), the first sentence should be clarified by adding at the end of the sentence the phrase "under this section." The second sentence should be written in the active voice to clarify who has the duty to report.

k. In the note to s. DWD 55.05 (6) (j) 1., the phrase "the other county" should be changed to "another county." For purposes of consistency, in subd. 2., the phrase "review application request" in the first sentence should be deleted.

l. In s. DWD 55.05 (6) (k), the phrase "review and inform the applicant" in the third sentence should be expanded to "review and shall inform the applicant of that fact."

m. In s. DWD 55.05 (8) (b) (intro.), the phrase "but not limited to" is unnecessary and should be deleted. In subd. 4., the comma after "psychiatrists" should be deleted.

n. In s. DWD 55.05 (9) (b), what is "other community information"? Is it defined somewhere? Perhaps a note could be provided explaining what types of information is included in this term.

o. In s. DWD 55.05 (9) (c), it appears that the phrase "children in care" could be replaced by the term "clients" which is defined in the definitions section of the rule.

p. In s. DWD 55.10 (1) (intro.), the phrase "prospective employe" should be better identified. For whom will the prospective employe work?

q. In s. DWD 55.10 (3) (a), what does the phrase "by the next working day" refer to? What day triggers this requirement?

r. Section DWD 55.10 (5) (d) could be clarified by rewriting the end of the provision as follows: "substantiated reports that the person committed acts of child abuse or neglect."

s. In s. DWD 55.10 (6), the rule refers to a person residing outside of this state within "the previous three years." What date is the trigger point for this time frame? The date of application? The date of the request for a background check? Some other date? The rule should be clarified. See, for example, s. 48.685 (2) (bm), Stats.

t. In s. DWD 55.10 (8) (c), what are the "applicable confidentiality requirements" referred to?

u. In s. DWD 55.10 (10) (intro.), it appears that the phrase "an entity" should be inserted before the phrase "need not bar." Also, what does the phrase "until and if" mean? If an entity may retain someone "until and if" a certain decision is reached, how long is this? Do the words "until" and "if" as used in this context not cancel each other out? Is the intent that an entity can retain someone until a decision is reached and if the decision is favorable, may continue to retain them? The rule should be clarified.

State of Wisconsin

Department of Workforce Development

DAY CARE CERTIFICATION

The Wisconsin Department of Workforce Development proposes an order to: repeal HFS 55.80 and 55.81; 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), and 55.08(3); repeal and recreate DWD 55.02(1) and 55.05; and create DWD 55.02(3m), (4f), (4m), (5m), (12m) and (17m), 55.04(9), 55.08(2)(n) and (5)(i), 55.09(5)(g) and (6)(f), 55.10 and 55.11, relating to criminal record background checks for certified day care operators, employes and contractors of certified day care operators, and nonclient residents at certified day care locations.

Analysis

Authority for rule. secs. 48.651 and 49.155(1d), Stats.

Statute interpreted. secs. 48.651, 48.685 and 49.155(1d), Stats.

In accordance with the statutes 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 regulatory approval for certified day care operators, employes and contractors of certified day care operators, and nonclient residents living at certified day care locations. 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 employe, prospective contractor, or prospective nonclient resident in the provider's home. The forms must be completed every four years. This requirement also applies to existing providers, employes, 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 a crimes table which lists 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. The crimes table is intended to be applied in a manner consistent with the crimes tables

that are contained in proposed rules issued by the Department of Health and Family Services under sec. 48.685, Stats. 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.

Standards. The proposed rule amends the standards for certified day care to provide that smoking shall be prohibited in any indoor or outdoor area in which children are present and to require that the day care provider keep a written record of the daily hours of attendance of each child in care.

Other provisions. Obsolete rule provisions relating to child care start-up grants are repealed.

SECTION 1. HFS 55.55 to 55.62 are renumbered to DWD 55.01 to 55.08.9

SECTION 2. HFS 55.80 and 55.81 are repealed.

SECTION 3. DWD 55.02(1) is repealed and recreated to read:

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

SECTION 4. DWD 55.02(3m) is created to read:

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

SECTION 5. 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. — Suggest solid underline; i. strike through

SECTION 6. DWD 55.02(4f) is created to read:

DWD 55.02(4f) "Covered employe or contractor" means a person employed by or under contract to a certified day care operator who provides services to clients, and does not include a person who is employed or under contract to perform infrequent or sporadic services, including maintenance services and other services that are not directly related to the care of a client.

SECTION 7. DWD 55.02(4m) is created to read:

with them to HFS to DWD

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DWD 55.02(4m) "Covered transaction" means any of the following:

- (a) A person acting as a certified day care operator. *... non-client?*
- (b) A certified day care operator hiring an employe.
- (c) A certified day care operator contracting with a person who will be under the certified day care operator's control and who has or is expected to have access to the clients of the certified day care operator.
- (d) A certified day care operator permitting a person to live at the day care center who is not a client and who has or is expected to have access to the clients of the certified day care center.

SECTION 8. 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 9. DWD 55.02(12m) is created to read:

DWD 55.02(12m) "Nonclient resident" means a person living at the certified day care location who is not a client and is at least twelve years old.

SECTION 10. 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 11. 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 12. DWD 55.03(2)(c) is amended to read:

W-2 is not needed

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 participate in a W-2 activity prior to the development of an employability plan under s. 49.193 (4), Stats., approved by a JOBS administrative W-2 agency.~~ not defined

SECTION 13. 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:

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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 - what is this? see sec. 1

(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 55.10.

(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.

W-2

Use Part 1.01 (c)
T/S
5

(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 14. 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 ^{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.
6. A crime, act or offense identified by the department which precludes a showing of rehabilitation as listed in Table DWD 55.11 ?

(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. ^{what} This may mean delaying issuance of certification.

(c) If a certified day care operator, upon review of a department background information disclosure form of a person and any other information that may be available, finds that the person is not ineligible, the county agency ^{certified operator?} may employ, contract with, or permit the person to reside at the certified day care location for not more than 60 days pending receipt and satisfactory review of the criminal background and other required information. While the receipt and review of the of the information is pending, a certified day care operator shall provide supervision for a person who is employed or under contract or who is a nonclient resident. Supervision shall include, at minimum, periodic direct observation of the person.

no. it was just remembered

SECTION 15. DWD 55.05 is repealed and recreated to read:

DWD 55.05 Criminal history and child abuse record search. (1) COUNTY

AGENCY RESPONSIBILITIES. Except as provided in sub. ⁴(3) and (4), a county agency may not give regulatory approval to a covered transaction if the county agency knows or should have known any of the following:

- (a) That the person has been convicted of a serious crime or has been adjudicated delinquent on or after his or her 12th birthday for committing a serious crime.
- (b) That the person has pending against him or her a charge for a serious crime.
- (c) That 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) CERTIFIED DAY CARE OPERATOR RESPONSIBILITIES. Except as provided in sub. (3), a certified day care operator may not engage in a ^{delinquent, no need to be convicted} covered transaction with an employe, a contractor or a nonclient resident if the certified day care operator knows or should have known any of the following:

(a) That the person has been convicted of a serious crime or has been adjudicated delinquent on or after his or her 12th birthday for committing a serious crime.

(b) That the person has pending against him or her a charge for a serious crime.

(c) That 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.

(3) A county agency may give regulatory approval to a covered transaction conditioned on the receipt of the background information specified in s. DWD 55.10 indicating that the person is not ineligible to receive regulatory approval for a covered transaction for a reason specified in sub. (1)(a) to (e).

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

(5) 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. ?

(6) REHABILITATION OF SERIOUS CRIMES. A person who has not committed a serious crime identified under sub. (5) 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.

*bad
intent*

(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: ^{any...}

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. *e.g. running a stop sign*

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. Favorable statements from therapists, counselors and other professionals.

6. Attempts or efforts at restitution.

7. Victim's impact statement.

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

9. ^{None} No information to indicate that the person has any pending or existing arrest warrants or civil judgments or other legal enforcement actions. X

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

(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 made 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. _{may}

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 ^{including} ~~along with~~ a copy of the written decision ^{and} ~~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 ^{or agency} 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 ^{with this chapter} concerning each person who is denied a certificate due to the review of background information. The results of each rehabilitation review shall be immediately reported to the subunit of the department of health and family services responsible for collecting ^{the} ~~this~~ information. *passive*

NOTE: The results of rehabilitation reviews should be sent to the following address: Office of Legal Counsel, Department of Health and Family Services, 1 W. Wilson St., Room 651, P.O. Box 7850, Madison, WI 53701-7850.

(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 ^{another} 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 ^{shall} inform the applicant. ^{at that time} 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.

(7) 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

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X

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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.

(8) 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: X

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. X

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

6. Ban on transporting clients.

7. Periodic alcohol or drug testing.

(9) 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. *what is this?*

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

SECTION 16. DWD 55.08(2)(n) is created to read:

DWD 55.08(2)(n) Smoking shall be prohibited in any indoor or outdoor area in which children are present.

SECTION 17. DWD 55.08(3) is amended to read:

Need to show this
DWD 55.08(3) When a provider cares for children in the children's own home, the provider shall comply with requirements in sub. (2) (c), (e), (h), ~~and (L)~~, and (n), but the provider is not required to comply with requirements in sub. (2) (a), (b), (d), (f), (g), (i), (j), (k) and (m).

SECTION 18. DWD 55.08(5)(i) is created to read:

DWD 55.08(5)(i) The provider shall keep a written record of the daily hours of attendance of each child in care.

SECTION 19. DWD 55.09(5)(g) is created to read:

DWD 55.09(5)(g) Smoking shall be prohibited in any indoor or outdoor area in which children are present.

SECTION 20. DWD 55.09(6)(f) is created to read:

DWD 55.09(6)(f) The provider shall keep a written record of the daily hours of attendance of each child in care.

SECTION 21. DWD 55.10 is created to read:

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

Effective October 1, 1998, this subsection applies to a prospective certified provider, a prospective employee, including a prospective substitute employee, 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. (a) Effective October 1, 1999, this subsection applies to a certified provider, employee, 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.).

NOTE: The form referred to in subs. (1) and (2) is the form developed by the Department of Health and Family Services for background information disclosure. The form may be obtained from the DHFS Internet site at: <http://www.dhfs.state.wi.us/caregiver/forms/index.htm>

It may also be obtained from Rebecca Brueggeman at the DWD Office of Child care, 201 E. Washington Ave., Room 170, P.O. Box 7935, Madison WI 53707-7935 (email address: bruegre@dwd.state.wi.us)

(3) DUTY TO REPORT. (a) A certified day care operator subject to sub. (1) or (2) shall report to the county agency, by the next working day, information on any pending charge or conviction for a crime or other act or offense for which information is requested on the background information form.

(b) A certified day care operator shall, as soon as possible, report to the county agency when an employe or contractor of the certified day care operator or a nonclient resident at the certified day care location has been charged with or has committed a crime, act or offense.

(c) A certified day care operator shall, as soon as possible, report to the county agency when a new nonclient resident resides or is expected to reside at the certified day care location.

(d) A certified day care operator shall include in its personnel or operational policies a provision that requires employed or contracted staff or persons residing at the certified day care location to notify the certified day care operator as soon as possible when the person has been charged with or has committed any crime act or offense.

(4) 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 of 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 ^{to determine if the} ~~that the~~ person is fit and qualified ^{for what?} 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.

(5) 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 ^{that the person committed}

(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 ^{some sort of domicile?} 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).

(6) 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, ^{to applicant?} 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. *(multiple states → multiple efforts)*

(7) ARMED FORCES RECORD SEARCH. If the person who is the subject of a criminal and background history search was in a branch of the armed forces, including any reserve component, within the last 3 years, the county agency 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 county agency shall obtain information concerning the nature and circumstances of the discharge.

(8) 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.

(9) 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.

(10) 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 ^{don't then cancel each other} 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. ^{55.10 (4)(b) 7 & 8 don't count} the person must show that he or she is otherwise eligible for rehabilitation review under sub. (4)(c). ^{don't talk about rehab review}

(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 22. DWD 55.11 is created to read:

Form
DWD 55.11 Crimes table. (1) PURPOSE. The purpose of the table in this section is to provide the list of nonrehabilitative serious crimes, rehabilitative serious crimes, and less serious

crimes required by s. 48.685(7)(a) and (b), Stats. To the greatest extent possible, this section should be interpreted in a manner consistent with the crimes list established as Appendix A to s. HFS 12.11.

NOTE: This list reflects Wisconsin's current crime statutes as of 9/16/98. If a person is convicted of a crime not listed here, the substantial relatedness test must be applied 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, the county agency 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, it should apply the sanction associated with that crime even though the crime under which the person is convicted may be a lesser crime.

Key:

Permanent bar - conviction means permanently barred from all 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 the person must demonstrate that he or she has been rehabilitated.

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

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

<u>Wis. Stats.</u>	<u>Crime (F = Felony; M = Misdemeanor)</u>	<u>Program Sanction</u>
<u>Chapter 49 - Public Assistance</u>		
49.49	Medicaid fraud (F or M)	Bar w/rehab
<u>Chapter 346 - Rules of the Road</u>		
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)	Permanent bar
346.67	Hit and run: failure to perform duty upon striking a person or attended vehicle (F or M)	Bar w/rehab
<u>Chapter 940 - Crimes Against Life and Bodily Security</u>		
940.01	1st degree intentional homicide (F)	Permanent bar
940.02	1st degree reckless homicide (F)	Bar w/rehab
940.03	Felony murder (F)	Bar w/rehab

940.05	2nd degree intentional homicide (F)	Bar w/rehab
940.06	2nd degree reckless homicide (F)	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)	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)	Bar w/rehab
940.195	Battery to an unborn child (F or M)	Bar w/rehab
940.20	Battery - special circumstances (F)	Bar w/rehab
940.203	Battery or threat to a judge (F)	Bar w/rehab
940.205	Battery or threat to Department of Revenue employe (F)	Bar w/rehab
940.207	Battery or threat to Department of Workforce Development or Department of Commerce employe (F)	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)	1st degree sexual assault (F)	Permanent bar
940.225(2)	2nd degree sexual assault (F)	Permanent bar
940.225(3)	3rd degree sexual assault (F)	Permanent bar
940.225(3m)	4th degree sexual assault (M)	Bar w/rehab
940.23	Reckless injury (F)	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)	Endangering safety - dangerous weapon, discharge weapon into vehicle/building (F)	Bar w/rehab
941.20(3)	Endangering safety - dangerous weapon, discharge weapon from vehicle (F)	Bar w/rehab
941.21	Disarming a peace officer (F)	Bar w/rehab
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
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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)	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 to 946.88	Racketeering (organized crime, RICO) (F)	Bar w/rehab

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

947.013	Harassment (F)	Bar w/rehab
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Chapter 948 - Crimes Against Children

948.02 (1)	1st degree sexual assault of a child (F)	Permanent bar
948.02 (2)	2nd degree sexual assault of a child (F)	Bar w/rehab
	↓ 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)	
	↓ if child was under the age of 13	Permanent bar
	↓ if child was age 13, 14 or 15 and person was, at the time, more than 4 years older than the child)	Bar w/rehab
	↓ other	Bar w/rehab
948.03 (2)(a)	Physical abuse of a child - intentionally causes great	Permanent bar;

	bodily harm (F)	
948.03(2)(b) or (c)	Physical abuse of a child-intentionally causes bodily harm	Bar w/rehab
948.03 (3)	Physical abuse of a child - recklessly causes bodily harm (F)	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)	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)	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)	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)	Bar w/rehab
948.23	Concealing death of a child (F)	Bar w/rehab
948.24	Unauthorized placement for adoption (F)	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)	Bar w/rehab

948.35	Solicitation of a child to commit a felony (F)	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)	Bar w/rehab
948.51	Hazing (F)	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)	Bar w/rehab
948.605 (3)	Discharge of firearm in a school zone (F)	Bar w/rehab
948.61	Possess dangerous weapon other than firearm on school premises (F)	Bar w/rehab
948.62	Receiving stolen property from a child (F)	Bar w/rehab
948. --	All other ch. 948 felonies	Bar w/rehab

Chapter 951 - Crimes Against Animals

951.02	Mistreating animals (F)	Bar w/rehab
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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)	Bar w/rehab
	Possession of controlled substances w/intent to manufacture, distribute or deliver (F)	Bar w/rehab
	Possession of a Schedule I or II controlled substance (F)	Bar w/rehab
	Possession of a controlled substance other than a Schedule I or II controlled substance (F)	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)	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)	Bar w/rehab

961.455	Using a child for illegal drug distribution or manufacturing purposes (F)	Bar w/rehab
961.46	Distribution to persons under 18 (F) <i>or M</i>	Bar w/rehab
961.46	Distribution to persons under 18 (M)	Bar w/rehab
961.465	Distribution to prisoners (F or M)	Bar w/rehab
961.49	Distribution of or possession with intent to delivery at or near certain places (F)	Bar w/rehab
961.492	Distribution of or possession with intent to delivery on public transit (F)	Bar w/rehab
961.575	Delivery of drug paraphernalia to a minor (M)	Bar w/rehab

**NOTE: A copy of the DWD or DHFS 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 DHFS 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 rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s.227.22(2)(intro.), Stats.

(End)

Tommy G. Thompson
Governor

Linda Stewart
Secretary



State of Wisconsin

Department of Workforce Development

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March 17, 1999

Senator Fred Risser
President of the Senate
220 South, State Capitol
Madison, Wisconsin 53702

Representative Scott Jensen
Speaker of the Assembly
211 West, State Capitol
Madison, Wisconsin 53702

Notice of Administrative Rules in Final Draft Form

Clearinghouse rule number: 98-204
Rule number: DWD 55
Relating to: Background Checks for Certified Day Care Providers

Dear Senator Risser and Representative Jensen:

I have enclosed proposed rules and a rule report for referral to the appropriate legislative standing committees. The report consists of a summary of the public hearing comments and the agency response, Legislative Council Rules Clearinghouse Report and the agency response, a fiscal estimate, and a regulatory flexibility analysis.

If you have any questions regarding this matter, please do not hesitate to contact us.

Respectfully submitted,

A handwritten signature in black ink that reads "Linda Stewart". The signature is written in a cursive, flowing style.

Linda Stewart, Ph.D.
Secretary

State of Wisconsin

Department of Workforce Development

DAY CARE CERTIFICATION

The Wisconsin Department of Workforce Development proposes an order to: repeal HFS 55.80 and 55.81; 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), 55.08(3), and 55.09(2)(e)1.; repeal and recreate DWD 55.02(1) and 55.05; and create DWD 55.04(9), 55.08(2)(n) and (5)(i), and 55.09(5)(g) and (6)(f), relating to criminal record background checks for certified day care operators, employees and contractors of certified day care operators, and nonclient residents at certified day care locations.

Analysis

Authority for rule. secs. 48.651 and 49.155(1d), Stats.

Statute interpreted. secs. 48.651, 48.685 and 49.155(1d), Stats.

In accordance with the statutes 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 provide guidance for county agencies and certified day care operators in complying with the background review requirements of sec. 48.685, Stats.

The proposed rule provides that county agencies shall follow the provisions of ch. HFS 12, Wis. Adm. Code, in obtaining background information and conducting background reviews under sec. 48.685, Stats. This includes following the same requirements for obtaining background information and for evaluating the information in accordance with the crimes list created as an attachment to ch. HFS 12. County agencies are required to apply the same standards to certified day care operators as ch. HFS 12 applies to licensed day care centers. The same standards may also apply to employees, contractors and nonclient residents.

In accordance with sec. 48.685, Stats., the background review requirements apply to new certified day care operators effective October 1, 1998, and to existing certified day care operators effective October 1, 1999. A county agency is not required to bar a certified day care operator or other affected person 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.

Other standards. The proposed rule amends the standards for certified day care to provide that smoking shall be prohibited in any indoor or outdoor area in which children are present and to

require that the day care provider keep a written record of the daily hours of attendance of each child in care.

Other provisions. Obsolete rule provisions relating to child care start-up grants are repealed.

SECTION 1. HFS 55.55 to 55.62 are renumbered to DWD 55.01 to 55.09.

SECTION 2. HFS 55.80 and 55.81 are repealed.

SECTION 3. DWD 55.02(1) is repealed and recreated to read:

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

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(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 6. 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 applicant to ~~attend a JOBS program~~ participate in job search, training or orientation under s. 49.147(2)(a), Stats., prior to the development of an employability plan ~~under s. 49.193 (4), Stats., approved by a JOBS administrative.~~

SECTION 7. 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. 48.685, Stats.

(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 (~~or regular~~), certification may be issued only after the provider has demonstrated compliance with all certification standards including training. Level I (~~or 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 (~~or regular~~), certification if the provider is related to all the children in the provider's care.

(b) Level II (~~or 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 (~~or 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 8. DWD 55.04(9) is created to read:

DWD 55.04(9) CERTIFICATION DECISION AFTER BACKGROUND REVIEW.

The county agency shall conduct background reviews in accordance with s. 48.685, Stats. For guidance in resolving issues that arise in particular cases, the county agency shall follow ch. HFS 12, Wis. Adm. Code, and the crimes table incorporated into CH. HFS 12, Wis. Adm. Code, and shall apply the standards which apply to licensed day care facilities.

SECTION 9. DWD 55.05 is repealed and recreated to read:

DWD 55.05 Criminal history and child abuse record search. (1) The county agency shall follow the requirements for criminal history and child abuse record search that are contained in s. 48.685, Stats., and ch. HFS 12, Wis. Adm. Code, and the crimes table incorporated into ch. HFS 12, Wis. Adm. Code, and shall apply the standards which apply to licensed day care facilities, except the county agency shall require any prospective or current employe, contractor under the control of the certified day care provider, or nonclient resident who has or is expected to have access to clients to submit the completed background information form to the county agency. In applying the provisions relating to rehabilitation decisions, all decisions and review procedures shall be made and conducted by the county agency.

NOTE: Detailed information on ch. HFS 12, Wis. Adm. Code, 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 DHFS requirements 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.

(2) Each county agency shall maintain its records concerning each person who is denied a certificate due to the review of background information. The county shall immediately report the receipt of an application for rehabilitation review and the results of each rehabilitation review to the office of legal counsel of the department of health and family services.

(3) A county agency need not bar and may continue the regulatory approval of a certified day care operator, employe, contractor or nonclient resident beyond October 1, 1999, until a favorable rehabilitation review decision has been reached by the agency and all of the following are met:

(a) The certified day care operator 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 any required waiting period, the certified day care operator or person must show that he or she is otherwise eligible for rehabilitation review.

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

(d) The person is awaiting rehabilitation review from a county agency and the county agency is unable to complete a rehabilitation review request for the person prior to October 1, 1999.

NOTE: The application for rehabilitation review and the results of the rehabilitation review should be sent to the following address: Office of Legal Counsel, Department of Health and Family Services, 1 W. Wilson St., Room 651, P.O. Box 7850, Madison, WI 53701-7850.

SECTION 10. DWD 55.08(2)(n) is created to read:

DWD 55.08(2)(n) Smoking shall be prohibited in any indoor or outdoor area in which children are present.

SECTION 11. DWD 55.08(3) is amended to read:

DWD 55.08(3) When a provider cares for children in the children's own home, the provider shall comply with requirements in sub. (2) (c), (e), (h), ~~and (L)~~, and (n), but the provider is not required to comply with requirements in sub. (2) (a), (b), (d), (f), (g), (i), (j), (k) and (m).

SECTION 12. DWD 55.08(5)(i) is created to read:

DWD 55.08(5)(i) The provider shall keep a written record of the daily hours of attendance of each child in care.

SECTION 13. DWD 55.08 (6)(d) is amended to read:

DWD 55.08 (6)(d) The maximum number of children that ~~one~~ the provider may care for is shown in Table ~~55.64~~ 55.08 (6) A and B.

SECTION 14. DWD 55.09(e)1. is amended to read:

DWD 55.09(e)1. The name, address, date of birth, education, position names and addresses of employers in previous work experience in child care, address and telephone number of a person to be notified in an emergency, ~~and a statement signed by the employe affirming that he or she has not been convicted or is not the subject of a pending criminal charge as specified under s. HFS 55.59 (1).~~

SECTION 15. DWD 55.09(5)(g) is created to read:

DWD 55.09(5)(g) Smoking shall be prohibited in any indoor or outdoor area in which children are present.

SECTION 16. DWD 55.09(6)(f) is created to read:

DWD 55.09(6)(f) The provider shall keep a written record of the daily hours of attendance of each child in care.

EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s.227.22(2)(intro.), Stats.

RULE REPORT

Department of Workforce Development

Rule No.: DWD 55

Relating to: Criminal record background checks for certified day care operators

Agency contact person for substantive questions.

Name Dave Edie

Title Director, DWD Office of Child Care

Phone Number 266-6946

Agency contact person for internal processing.

Name Howard Bernstein

Title DWD Legal Counsel

Phone Number 266-9427

1. Agency statutory authority under which the agency intends to promulgate the rule(s).
Secs. 48.651 and 49.155(1d), Stats.
2. Citation of federal regulations which require adoption or which are relevant to the proposed rule(s).
N.A.
3. Citation of court decisions which are applicable to the proposed rule(s).
N.A.
4. Description of the proposed rule(s).
See the rule analysis included with the rule text.
5. Reason for the proposed rule(s).
See the rule analysis included with the rule text.

Tommy G. Thompson
Governor

Linda Stewart
Secretary



State of Wisconsin

Department of Workforce Development

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Response to Legislative Council and Public Hearing Comments

DWD 55 implements the criminal background check requirements of s. 48.685, Stats., as one of the certification standards for certified day care providers. The requirements of s. 48.685, Stats., are applied to a wide array of other caregivers, including licensed day care providers, in HFS 12. DWD's intention is to mirror the standards for criminal background checks that HFS will be applying to licensed day care providers. The hearing draft of DWD 55 was an extensive rule that essentially duplicated the provisions in HFS 12 and applied them to certified day care providers.

The current draft of DWD 55 has been shortened to cross-reference HFS 12 as a certification standard. This change was made in response to a Legislative Council question on DWD's statutory authority to promulgate its own extensive rule. Another concern was the inefficiency of DWD having to change its rule each time HFS changed its rule.

DWD received written hearing comments from Carol Medaris of the Wisconsin Council on Children and Families and David Pifer of Legal Action of Wisconsin (copies attached) that were similar to comments received by DHFS on HFS 12. DHFS has made numerous changes in HFS 12 in response to public comments, including many of the changes requested in the comments to DWD 55.

Most of the format comments made by the Legislative Council are obsolete since the rule has been rewritten. We did disagree with a Legislative Council format request to list the changes affecting the sections with a DWD prefix before the sections with an HFS prefix. We understand the rule and agree to follow it in the future, but it made more sense to list the sections with an HFS prefix first in this case because we renumber the HFS rules to DWD rules and then, as DWD rules, they are changed in various ways. If we listed the DWD sections first, we would be making changes to rules that don't exist yet.



"For these are all our children . . .
we will all profit by, or pay for,
whatever they become." James Baldwin

January 22, 1999

Elaine Pridgen
Office of Legal Counsel
State Department of Workforce Development
P.O. Box 7946
Madison, WI 53707-7946

Re: Proposed rule relating to criminal background checks for day care operators, Ch. DWD 55, Wis. Adm. Code

Dear Ms. Pridgen,

This letter constitutes my comments on the proposed rule described above. In general, the rule goes far exceeds the authority granted the Department in sec. 48.685, stats. in the following ways.

1. DWD 55.04(9)(a) and DWD 55.05(5) should not include the words "or has committed" in their description of those subject to the day care provider prohibitions. The statute authorizes only the inclusion of those convicted of serious crimes or those with serious crimes pending against them.
2. In DWD 55.05(6)(c)1, "serious crimes" should be substituted for the phrase, "criminal or municipal ordinance offense," to bring the rehabilitation provisions into conformity with the rest of the statute. Otherwise, people may be prevented from day care work because of very minor infractions of the law which have no relationship to their ability to care for children. This is no where authorized by the statute.
3. DWD 55.11 should be substantially revised to remove offenses which are either not serious crimes or not related to providing care for children. I would concur with the list of crimes suggested for elimination by Legal Action of Wisconsin in their Comments submitted on this rule.

Respectfully submitted,


Carol W. Medaris
Project Attorney

RESEARCH • EDUCATION • ADVOCACY

LEGAL ACTION OF WISCONSIN, INC.

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January 22, 1999

STATE DEPARTMENT OF WORKFORCE DEVELOPMENT
OFFICE OF LEGAL COUNSEL
PO BOX 7946
MADISON WI 53707-7946

Dear Sir:

These comments are submitted in response to the proposed administrative rules governing the criminal background checks for certified day care operators. In critical aspects, the proposed rules go far beyond the authority granted by the statute. As written they appear to be open to challenge because many of the proposed crimes are not substantially related to the care of clients. The effect of the rules may be disproportionately harsh on minority citizens and open to challenge because of their disparate impact on minorities. Our concerns are detailed below.

1. DWD 55.04(9)(a) - the phrase, "or has committed" should be deleted from the second sentence.
 - a) the act of committing a crime, without conviction or adjudication, is not included in either §48.685(2)(a)(1) or §48.685(5)(b) as a basis for denying an entity its license or certification, or for denying employment to an individual.
 - b) without conviction or adjudication, the decision as to what constitutes the commission of a crime is vague and impossible to apply. Determinations of guilt are left to low level staff, applying their own personal opinions, and applicants have no way to challenge the determination.
 - c) the inclusion of the phrase, "or has committed" is not authorized by the statute and therefore the department has exceeded its authority by including it in the regulations.
2. DWD55.05(5) - delete the phrase, "or has committed" from the first sentence, for the same reasons stated above.