

3. DWD 55.05(6)(c)(1.) - the phrase, "criminal or municipal ordinance offense" should be replaced with the phrase, "serious crime".
  - a) the inclusion of the phrase, "criminal or municipal ordinance offense" is not authorized by the statute and therefore the department has exceeded its authority by including it in the regulations. The proposed change brings the regulation into conformity with the letter and spirit of the statute.
  - b) as written, the regulation will mean that a pending municipal ordinance violation for loitering, failure to remedy building code violations, littering, or jaywalking would prevent a person from pursuing a rehabilitation review even though the violations are only civil infractions and bear no relationship what so ever to the purpose or intent of the statute.
  - c) the use of this provision will have a disproportionate effect on minorities and subject the regulations to a legal challenge because of disparate impact on minorities.
4. DWD 55.05(6)(c)(2.) & (3.) - delete both paragraphs.
  - a) both paragraphs cover violations already contained in the list of crimes that bar licensing, certification, or employment, absent a finding of rehabilitation.
  - b) the inclusion of the two paragraphs creates a circular situation in which a person can never have the opportunity to prove rehabilitation. In effect, the department has converted findings of abuse or neglect of a client, misappropriation of the property of a client, and abuse or neglect of a child into a permanent bar to licensing, certification, or employment. As such, the departments actions exceed their authority to promulgate regulations under the statute.
5. DWD 55.11 - eliminate the following crimes from the list of offenses because they do not constitute a serious crime as defined in §48.685(c) and §48.685(7): reckless driving; causing great bodily harm; hit and run: failure to perform duty upon striking a person or attended vehicle; battery (M-domestic); battery or threat to a judge; battery or threat to Department of Workforce Development, Revenue, or Commerce employee; law enforcement officer - failure to render aid (M); endangering safety; carrying a firearm in public

building; sale, possession, use or transport of machine guns or certain other weapons; possession of short barreled shotgun/rifle; possession of firearm; sale, delivery or possession of firearm silencer; possession of explosives; invasion of privacy; damage to property; arson of a building or damage of any property by explosives; arson of property other than a building; arson with intent to defraud; Molotov cocktails; possession of burglarious tools; operating motor vehicle without owner's consent - w/weapon & force; blackmail; threat to communicate derogatory information; retail theft; sexual gratification; lewd and lascivious behavior; photos or other representation showing nudity; obscene material or performance; making lewd, obscene or indecent drawings; prostitution; soliciting prostitutes; pandering; keeping a place of prostitution; failure to comply w/officer's attempt to take person into custody; escape from custody; assisting/permitting escape; harboring a felon; racketeering; failure to support; practitioner "self-prescribing" (M); manufacture, distribution or delivery of controlled substances; possession of controlled substances w/intent to manufacture, distribute or deliver; possession of controlled substances; possession or attempt to possess cocaine; keeping any store, warehouse, building, etc. for use manufacture or delivery of controlled substances; acquire or obtain possession of controlled substances by fraud, misrepresentation, forgery, deception or subterfuge; and to possess/make a counterfeit substance or to duplicate the appearance, packaging, form or label of a controlled substance.


- a) DWD has exceeded its authority in the development of the crimes table because the list is over-reaching, and many of the crimes cannot be defined as "serious crimes" because they are not substantially related to the care of a client.
- b) the crimes table is so broad that it catches both the sexual predator and the wayward prostitute. The over-reaching coverage of the list will snare large numbers of our citizens and force them to seek an administrative determination of rehabilitation. So many people will be caught by the regulations that the administrative process will either collapse of its own weight, or the state will spend millions staffing administrative tribunals, that could be avoided if the crimes table covered only those crimes that are substantially related to care of a client.
- c) the practical effect of the crime table will be to deny employment to many individuals who would successfully

prove rehabilitation. Employers will refuse to hire the person, and by the time the administrative process is complete the position will be filled and the applicant will still be unemployed.

- d) it is bad public policy to waste taxpayer money with an expensive administrative process made necessary by over-reaching regulations.
- e) the over-reaching nature of the list will have a disparate impact on minority and low-income citizens. Proportionally more minorities and low-income individuals are charged and convicted of crimes than are either non-minorities or affluent citizens, and the longer the crime table the greater the number of minorities who will be snared. They will be denied employment and forced to participate in expensive and time-consuming administrative hearings. Minorities will be forced into this situation at a much higher rate than others in the community. The disparate impact can be limited by including on the list only those crimes that really fit the definition of serious crimes under the statute.
- f) the crime table needs to be totally redone, and limited to only those crimes that are serious, as defined by state law.

Thank you for your consideration of these comments.

Sincerely,



David Pifer  
Attorney at Law

Tommy G. Thompson  
Governor

Linda Stewart  
Secretary



State of Wisconsin

Department of Workforce Development

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**OFFICE OF THE SECRETARY**

201 East Washington Avenue  
P.O. Box 7946  
Madison, WI 53707-7946  
Telephone: (608) 266-7552  
Fax: (608) 266-1784  
<http://www.dwd.state.wi.us/>

**Final Regulatory Flexibility Analysis**

Clearinghouse rule number: 98-204

Rule number: DWD 55

Relating to: Background Checks for Certified Day Care Providers

Final regulatory flexibility analysis not required. (Statement of determination required.)

Certified day care operators will be affected by the rule change, but the rule will not have a significant economic impact because there is no material change from current procedures.

1. Reason for including or failing to include the following methods for reducing impact of the rule on small businesses: Less stringent compliance or reporting requirements; less stringent schedules or deadlines for compliance or reporting requirements; simplification of compliance or reporting requirements; establishment of performance standards to replace design or operational standards; exemption from any or all requirements.
2. Issues raised by small businesses during hearings, changes in proposed rules as a result of comments by small businesses and reasons for rejecting any alternatives suggested by small businesses.
3. Nature and estimated cost of preparation of any reports by small businesses.
4. Nature and estimated cost of other measures and investments required of small businesses.
5. Additional cost to agency of administering or enforcing a rule which includes any of the methods in 1. for reducing impact on small business.
6. Impact on public health, safety and welfare caused by including any of the methods in 1. for reducing impact on small businesses.

Tommy G. Thompson  
Governor  
Linda Stewart  
Secretary



State of Wisconsin

Department of Workforce Development

---

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<http://www.dwd.state.wi.us/>

January 27, 1999

The Honorable Judy Robson  
State Senator  
Co-Chair, Joint Committee for  
Review of Administrative Rules  
Room 15 South, State Capitol  
Madison WI 53702

The Honorable Glenn Grothman  
State Representative  
Co-Chair, Joint Committee for  
Review of Administrative Rules  
Room 15 North, State Capitol  
Madison WI 53702

Re: Emergency rule affecting DWD 55, Wis. Adm. Code  
Criminal background reviews – certified day care  
(Permanent Rule - CR 98-204)

Dear Senator Robson and Representative Grothman:

I am writing to request a 60 day extension of this emergency rule, which became effective on October 1, 1998. Without an extension, the emergency rule will expire on February 27, 1999.

The purpose of this rule is to implement statutory requirements for criminal background reviews and related decisions on regulatory approval for certified day care operators, employees and contractors of certified day care operators, and nonclient residents living at certified day care locations. A public hearing on the permanent rule was held on January 15, 1999 and written comments were accepted until January 22, 1999. DWD has received written comments on the rule from Legal Action of Wisconsin, Inc. and the Wisconsin Council on Children and Families.

The department is currently reviewing the comments received and considering revisions to the proposed rule. We expect to submit the rule for legislative review by February 15, 1999. We have been unable to complete the permanent rulemaking procedures before the initial expiration date of the emergency rule because we are coordinating this rule with the Department of Health and Family Services rule on criminal background reviews and both agencies have received requests for revisions to the rule.

If the emergency rule is not extended, there could be questions about the validity of the background reviews conducted by county agencies or certified day care operators until the permanent rule becomes effective.

Thank you for your consideration of this request. Please contact DWD Executive Assistant Mark Liedl at 267-9543 if you have any questions concerning this rule extension.

Sincerely,

  
Linda Stewart, Ph. D.  
Secretary

Tommy G. Thompson  
Governor

Linda Stewart  
Secretary



State of Wisconsin

Department of Workforce Development

---

OFFICE OF THE SECRETARY

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March 23, 1999

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

Douglas LaFollette  
Secretary of State of Wisconsin  
30 W. Mifflin Street  
Madison, Wisconsin 53703

### Transmittal of Rule Adoption

Clearinghouse rule number: Emergency rule

Rule number: DWD 55

Relating to: Certified Day Care Standards

Dear Mr. Poulson and Mr. LaFollette:

I have enclosed a rules certificate, order of adoption, rule text, and fiscal estimate for the filing of an emergency rule.

Respectfully submitted,

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

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, employes and contractors of certified day care operators, and nonclient residents at certified day care locations.

---

#### 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:

This represents the most recent amended version of this emergency rule which was first adopted on October 1, 1998. 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.** 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 an 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](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.

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

ORIGINAL       UPDATED  
 CORRECTED       SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.  
DWD 55  
Amendment No. if Applicable

Subject  
Criminal record background checks for certified day care operators

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

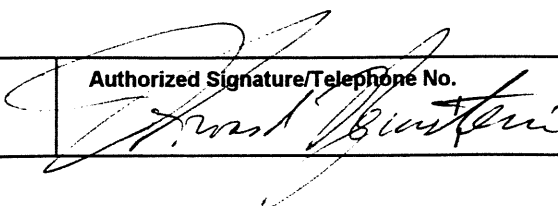
Assumptions Used in Arriving at Fiscal Estimate

All costs to the Department and local governments for the expanded background checks were included in the 1997-1999 biennial budget act, 1997 Wisconsin Act 27. There are no additional costs for state government 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/ASD Howard Bernstein 266-9427

Authorized Signature/Telephone No.



Date

12/14/98

**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  
Criminal record background checks for certified day care operators and others

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

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

**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/ASD Howard Bernstein 266-9427

Authorized Signature/Telephone No.  
*Howard Bernstein* 266-9427

Date  
12/14/98

# 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, employes and contractors of certified day care operators, and nonclient residents at certified day care locations.

---

### 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:

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### 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.



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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](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 ~~55-61~~ 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.