

2019 DRAFTING REQUEST**Bill**

For: **Administration-Budget 266-2288** Drafter: **ewheeler**
 By: **Bork** Secondary Drafters:
 Date: **12/20/2018** May Contact:

Same as LRB:

Submit via email: **YES**
 Requester's email:
 Carbon copy (CC) to: **doasbostatlanguage@wisconsin.gov**
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Pre Topic:

DOA:.....Bork, BB0155 -

Topic:

Background checks for congregate care workers

Instructions:

See attached

Drafting History:

| <u>Vers.</u> | <u>Drafted</u> | <u>Reviewed</u> | <u>Submitted</u> | <u>Jacketed</u> | <u>Required</u> |
|--------------|-----------------------|-----------------------|----------------------|-----------------|-----------------|
| /? | eshea 12/21/2018 | aernstr 1/2/2019 | | | |
| /P1 | ewheeler 2/1/2019 | aernstr 2/6/2019 | dwalker 1/2/2019 | | State |
| /P2 | ewheeler 2/17/2019 | aernstr 2/18/2019 | wjackson 2/6/2019 | | State |
| /P3 | eshea 2/20/2019 | anienaja 2/20/2019 | lparisi 2/18/2019 | | State |

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|--------------|----------------|-----------------|----------------------|-----------------|-----------------|
| <u>Vers.</u> | <u>Drafted</u> | <u>Reviewed</u> | <u>Submitted</u> | <u>Jacketed</u> | <u>Required</u> |
| /P4 | | | dwalker 2/20/2019 | | State |

FE Sent For:

<END>

Wheeler, Elizabeth

From: Hanaman, Cathlene
Sent: Thursday, December 20, 2018 1:38 PM
To: Shea, Elisabeth; Wheeler, Elizabeth
Subject: FW: Statutory Language Drafting Request - 2019-21

From: Bork, Matthew - DOA <Matthew.Bork@wisconsin.gov>
Sent: Thursday, December 20, 2018 1:27 PM
To: Hanaman, Cathlene <Cathlene.Hanaman@legis.wisconsin.gov>
Cc: Kraus, Jennifer - DOA <Jennifer.Kraus@wisconsin.gov>; Bork, Matthew - DOA <Matthew.Bork@wisconsin.gov>
Subject: Statutory Language Drafting Request - 2019-21

Biennial Budget: 2019-21

Topic: Family First Prevention Services Act - background check changes

Tracking Code: BB0155

SBO Team: GGCF

SBO Analyst: Bork, Matthew
Phone: 608-266-2288
E-mail: Matthew.Bork@wisconsin.gov

Agency Acronym: 437

Agency Number: 437

Priority: High

Intent:

Two provisions of the Family First Prevention Services Act have an immediate effective date. This request is for a change requiring the department to conduct criminal fingerprint background checks on all workers in licensed child welfare congregate care facilities.

Attachments: False

Please send completed drafts to SBOSatlanguage@spmail.enterprise.wistate.us



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-1144/01
EAW
aha

DOA:.....Bork, BB0155 - Background checks for congregate care workers

FOR 2019-2021 BUDGET -- NOT READY FOR INTRODUCTION

In 12/21
Due 12/28

sa✓

nogen

1 AN ACT ...; relating to: the budget and making an exception to emergency
2 rulemaking procedures

Head
HEALTH AND HUMAN SERVICES
CHILDREN
Subhead

Analysis by the Legislative Reference Bureau

This bill requires a licensing entity to perform a fingerprint-based background check for all employees and contractors of congregate care facilities, defined under the bill to be a group home, shelter care facility, or residential care center for children and youth, as required under federal law. Under current law, only caregivers and nonclient residents of a congregate care facility are required to receive a background check.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 SECTION 1. 48.685 (1) (ao) of the statutes is created to read:
4 48.685 (1) (ao) "Congregate care facility" means a group home, shelter care
5 facility, or residential care center for children and youth.

1 **X SECTION 2.** 48.685 (1) (ap) of the statutes is created to read: °

2 48.685 (1) (ap) "Congregate care worker" means an adult employee or
3 contractor of a congregate care facility. "Congregate care worker" does not include
4 an unpaid volunteer.

****NOTE: Please review the definition of "contractor" under s. 48.685 (1) (ar) to
ensure this ~~defintion~~ ^{definition} is consistent with your intent.

5 **X SECTION 3.** 48.685 (1) (c) 2. of the statutes is amended to read: °

6 48.685 (1) (c) 2. A violation of s. 940.01, 940.02, 940.03, 940.05, 940.12, 940.19
7 (2), (4), (5) or (6), 940.22 (2) or (3), 940.225 (1), (2) or (3), 940.285 (2), 940.29, 940.295,
8 942.09 (2), 948.02 (1) or (2), 948.025, 948.03 (2) or (5) (a) 1., 2., 3., or 4., 948.05,
9 948.051, 948.055, 948.06, 948.07, 948.08, 948.081, 948.085, 948.11 (2) (a) or (am),
10 948.12, 948.13, 948.21 (2), 948.215, 948.30, or 948.53.

History: 1997 a. 27, 237, 281; 1999 a. 9, 32, 56, 185, 186; 2001 a. 109; 2003 a. 321; 2005 a. 149, 184, 277; 2007 a. 20 ss. 1346 to 1358, 9121 (6) (a); 2007 a. 97, 111, 116, 130, 153; 2009 a. 28, 76, 94, 185; 2011 a. 32, 35, 87, 258; 2013 a. 20, 165, 170, 334; 2015 a. 55, 129, 172, 366, 371; 2017 a. 12, 59, 128, 283; 2017 a. 364 s. 49; 2017 a. 365; s. 13.92 (2) (i).

11 **X SECTION 4.** 48.685 (2) (am) 6. of the statutes is created to read: °

12 48.685 (2) (am) 6. For a caregiver specified in sub. (1) (ag) 1. b. of a congregate
13 care facility only, a fingerprint-based check of the national crime information
14 databases, as defined in 28 USC 534 (f) (3) (A).

****NOTE: Do nonclient residents of congregate care facilities need to receive the
fingerprint check?

15 **X SECTION 5.** 48.685 (2) (b) (intro.) of the statutes is amended to read: °

16 48.685 (2) (b) (intro.) Every entity shall obtain all of the following with respect
17 to a caregiver specified in sub. (1) (ag) 1. a. or am. of the entity ^{plain} and with respect to
18 a nonclient resident of a caregiver specified in sub. (1) (ag) 1. am. and with respect

1 to a congregate care worker, except a caregiver specified in sub. (1) (ag) 1. b., of the
2 entity:

History: 1997 a. 27, 237, 281; 1999 a. 9, 32, 56, 185, 186; 2001 a. 109; 2003 a. 321; 2005 a. 149, 184, 277; 2007 a. 20 ss. 1346 to 1358, 9121 (6) (a); 2007 a. 97, 111, 116, 130, 153; 2009 a. 28, 76, 94, 185; 2011 a. 32, 35, 87, 258; 2013 a. 20, 165, 170, 334; 2015 a. 55, 129, 172, 366, 371; 2017 a. 12, 59, 128, 283; 2017 a. 364 s. 49; 2017 a. 365; s. 13.92 (2) (i).

Cross-reference: See also ch. DHS 12, Wis. adm. code.

Cross-reference: See also ch. DHS 12, Wis. adm. code.

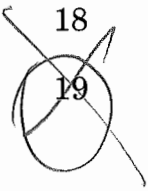
***NOTE: I deleted a "nonclient resident of a caregiver specified in sub. (1) (ag) 1. am., because everyone who falls under sub. (1) (ag) 1. am. is already included in this paragraph.

3 ~~SECTION 6.~~ 48.685 (2) (b) 6m. of the statutes is created to read:

4 48.685 (2) (b) 6m. For congregate care workers only, a fingerprint-based check
5 of the national crime information databases, as defined in 28 USC 534 (f) (3) (A).

6 ~~SECTION 7.~~ 48.685 (2) (bd) of the statutes is amended to read:

7 48.685 (2) (bd) Notwithstanding pars. (am) and (b), the department, a county
8 department, or a child welfare agency is not required to obtain the information
9 specified in par. (am) 1. to ~~5.~~ 6., and an entity is not required to obtain the information
10 specified in par. (b) 1m. to ~~5m.~~ 6m., with respect to a person under 18 years of age
11 whose background information form under sub. (6) (am) indicates that the person is
12 not ineligible to be employed at, contracted with, or permitted to reside at an entity
13 or permitted to reside with a caregiver specified under sub. (1) (ag) 1. am. of the entity
14 for a reason specified in sub. (4m) (b) 1. to 5. and with respect to whom the
15 department, county department, child welfare agency, or entity otherwise has no
16 reason to believe that the person is ineligible to be employed, contracted with, or
17 permitted to reside at an entity for any of those reasons. This paragraph does not
18 preclude the department, a county department, or a child welfare agency from
19 obtaining, at its discretion, the information specified in par. (am) 1. to 5. with respect



1 to a person described in this paragraph who is a nonclient resident or a prospective
2 nonclient resident of an entity.

History: 1997 a. 27, 237, 281; 1999 a. 9, 32, 56, 185, 186; 2001 a. 109; 2003 a. 321; 2005 a. 149, 184, 277; 2007 a. 20 ss. 1346 to 1358, 9121 (6) (a); 2007 a. 97, 111, 116, 130, 153; 2009 a. 28, 76, 94, 185; 2011 a. 32, 35, 87, 258; 2013 a. 20, 165, 170, 334; 2015 a. 55, 129, 172, 366, 371; 2017 a. 12, 59, 128, 283; 2017 a. 364 s. 49; 2017 a. 365; s. 13.92 (2) (i).

Cross-reference: See also ch. DHS 12, Wis. adm. code.

3 **SECTION 8.** 48.685 (2) (bg) of the statutes is amended to read:

4 48.685 (2) (bg) If an entity employs or contracts with a caregiver or congregate
5 care worker for whom, within the last year, the information required under par. (b)
6 1m. to 3m. ~~and~~ 5m. ^{and com.} has already been obtained by another entity, the entity may
7 obtain that information from that other entity, which shall provide the information,
8 if possible, to the requesting entity. If an entity cannot obtain the information
9 required under par. (b) 1m. to 3m. ~~and~~ 5m. ^{and com.} from another entity or if an entity has
10 reasonable grounds to believe that any information obtained from another entity is
11 no longer accurate, the entity shall obtain that information from the sources
12 specified in par. (b) 1m. to 3m. ~~and~~ 5m. ^{and com.}

History: 1997 a. 27, 237, 281; 1999 a. 9, 32, 56, 185, 186; 2001 a. 109; 2003 a. 321; 2005 a. 149, 184, 277; 2007 a. 20 ss. 1346 to 1358, 9121 (6) (a); 2007 a. 97, 111, 116, 130, 153; 2009 a. 28, 76, 94, 185; 2011 a. 32, 35, 87, 258; 2013 a. 20, 165, 170, 334; 2015 a. 55, 129, 172, 366, 371; 2017 a. 12, 59, 128, 283; 2017 a. 364 s. 49; 2017 a. 365; s. 13.92 (2) (i).

Cross-reference: See also ch. DHS 12, Wis. adm. code.

13 **SECTION 9.** 48.685 (2) (d) of the statutes is amended to read:

14 48.685 (2) (d) Every entity shall maintain, or shall contract with another
15 person to maintain, the most recent background information obtained on a caregiver
16 or congregate care worker under par. (b). The information shall be made available
17 for inspection by authorized persons, as defined by the department by rule.

History: 1997 a. 27, 237, 281; 1999 a. 9, 32, 56, 185, 186; 2001 a. 109; 2003 a. 321; 2005 a. 149, 184, 277; 2007 a. 20 ss. 1346 to 1358, 9121 (6) (a); 2007 a. 97, 111, 116, 130, 153; 2009 a. 28, 76, 94, 185; 2011 a. 32, 35, 87, 258; 2013 a. 20, 165, 170, 334; 2015 a. 55, 129, 172, 366, 371; 2017 a. 12, 59, 128, 283; 2017 a. 364 s. 49; 2017 a. 365; s. 13.92 (2) (i).

Cross-reference: See also ch. DHS 12, Wis. adm. code.

18 **SECTION 10.** 48.685 (3) (b) of the statutes is amended to read:

19 48.685 (3) (b) Every 4 years or at any time within that period that an entity
20 considers appropriate, the entity shall request the information specified in sub. (2)

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except a caregiver specified in
(b) ~~1m. to 5m.~~ for all persons who are caregivers specified in sub. (1) (ag) 1. a. or am. and all congregate care workers of the entity and for all nonclient residents of a caregiver specified in sub. (1) (ag) 1. am. of the entity.

History: 1997 a. 27, 237, 281; 1999 a. 9, 32, 56, 185, 186; 2001 a. 109; 2003 a. 321; 2005 a. 149, 184, 277; 2007 a. 20 ss. 1346 to 1358, 9121 (6) (a); 2007 a. 97, 111, 116, 130, 153; 2009 a. 28, 76, 94, 185; 2011 a. 32, 35, 87, 258; 2013 a. 20, 165, 170, 334; 2015 a. 55, 129, 172, 366, 371; 2017 a. 12, 59, 128, 283; 2017 a. 364 s. 49; 2017 a. 365; s. 13.92 (2) (i).

Cross-reference: See also ch. DHS 12, Wis. adm. code.

4 **SECTION 11.** 48.685 (4m) (b) (intro.) of the statutes is amended to read: ~

5 48.685 (4m) (b) (intro.) Notwithstanding s. 111.335, and except as provided in
6 sub. (5), an entity may not employ or contract with a caregiver specified in sub. (1)
7 (ag) 1. a. or am. or a congregate care worker or permit a nonclient resident to reside
8 at the entity or with a caregiver specified in sub. (1) (ag) 1. am. of the entity if the
9 entity knows or should have known any of the following:

History: 1997 a. 27, 237, 281; 1999 a. 9, 32, 56, 185, 186; 2001 a. 109; 2003 a. 321; 2005 a. 149, 184, 277; 2007 a. 20 ss. 1346 to 1358, 9121 (6) (a); 2007 a. 97, 111, 116, 130, 153; 2009 a. 28, 76, 94, 185; 2011 a. 32, 35, 87, 258; 2013 a. 20, 165, 170, 334; 2015 a. 55, 129, 172, 366, 371; 2017 a. 12, 59, 128, 283; 2017 a. 364 s. 49; 2017 a. 365; s. 13.92 (2) (i).

Cross-reference: See also ch. DHS 12, Wis. adm. code.

10 **SECTION 12.** 48.685 (4m) (d) of the statutes is amended to read: ~

11 48.685 (4m) (d) If the department learns that a caregiver, congregate care
12 worker, or nonclient resident is the subject of a pending investigation for a crime or
13 offense that, under this subsection or sub. (5), could result in a bar to employment
14 as a caregiver or residence working or residing at an entity, the department may
15 notify the entity of the pending investigation.

History: 1997 a. 27, 237, 281; 1999 a. 9, 32, 56, 185, 186; 2001 a. 109; 2003 a. 321; 2005 a. 149, 184, 277; 2007 a. 20 ss. 1346 to 1358, 9121 (6) (a); 2007 a. 97, 111, 116, 130, 153; 2009 a. 28, 76, 94, 185; 2011 a. 32, 35, 87, 258; 2013 a. 20, 165, 170, 334; 2015 a. 55, 129, 172, 366, 371; 2017 a. 12, 59, 128, 283; 2017 a. 364 s. 49; 2017 a. 365; s. 13.92 (2) (i).

Cross-reference: See also ch. DHS 12, Wis. adm. code.

16 **SECTION 13.** 48.685 (5) (bm) (intro.) of the statutes is amended to read: ~

17 48.685 (5) (bm) (intro.) For purposes of licensing a foster home for the
18 placement of a child or of providing subsidized guardianship payments to an interim
19 caretaker under s. 48.623 (6) (am) or to a person seeking those payments as a
20 successor guardian under s. 48.623 (6) (bm), no person, including a caregiver,

1 congregate care worker, or nonclient resident under this section, who has been
 2 convicted of any of the following offenses may be permitted to demonstrate that he
 3 or she has been rehabilitated:

History: 1997 a. 27, 237, 281; 1999 a. 9, 32, 56, 185, 186; 2001 a. 109; 2003 a. 321; 2005 a. 149, 184, 277; 2007 a. 20 ss. 1346 to 1358, 9121 (6) (a); 2007 a. 97, 111, 116, 130, 153; 2009 a. 28, 76, 94, 185; 2011 a. 32, 35, 87, 258; 2013 a. 20, 165, 170, 334; 2015 a. 55, 129, 172, 366, 371; 2017 a. 12, 59, 128, 283; 2017 a. 364 s. 49; 2017 a. 365; s. 13.92 (2) (i).

Cross-reference: See also ch. DHS 12, Wis. adm. code.

4 **NOTE:** Please verify that this change is correct ^{-em dash} foster homes are not congregate
 5 care facilities under this draft, and subsidized guardians are not necessarily congregate
 6 care workers under this section, so unless there is a specific reason that they need to be
 7 added to this section, I'd suggest taking it out. Another alternative would be to take out
 8 the "including a caregiver or nonclient resident" language and just leave it as "no person,"
 9 which includes everyone as is.

4 **SECTION 14.** 48.685 (5m) of the statutes is amended to read:

5 48.685 (5m) Notwithstanding s. 111.335, the department may refuse to license
 6 a person to operate an entity, a county department or a child welfare agency may
 7 refuse to license a foster home under s. 48.62, the department in a county having a
 8 population of 750,000 or more or a county department may refuse to provide
 9 subsidized guardianship payments to a person under s. 48.623 (6), and an entity may
 10 refuse to employ or contract with a caregiver or congregate care worker or permit a
 11 nonclient resident to reside at the entity or with a caregiver specified in sub. (1) (ag)
 12 1. am. of the entity if the person has been convicted of an offense that is not a serious
 13 crime, but that is, in the estimation of the department, county department, child
 14 welfare agency, or entity, substantially related to the care of a client.

History: 1997 a. 27, 237, 281; 1999 a. 9, 32, 56, 185, 186; 2001 a. 109; 2003 a. 321; 2005 a. 149, 184, 277; 2007 a. 20 ss. 1346 to 1358, 9121 (6) (a); 2007 a. 97, 111, 116, 130, 153; 2009 a. 28, 76, 94, 185; 2011 a. 32, 35, 87, 258; 2013 a. 20, 165, 170, 334; 2015 a. 55, 129, 172, 366, 371; 2017 a. 12, 59, 128, 283; 2017 a. 364 s. 49; 2017 a. 365; s. 13.92 (2) (i).

Cross-reference: See also ch. DHS 12, Wis. adm. code.

15 **SECTION 15.** 48.685 (6) (am) of the statutes is amended to read:

16 48.685 (6) (am) Every 4 years an entity shall require all of its caregivers and
 17 ~~all, nonclient residents of the entity or of a caregiver specified in sub. (1) (ag) 1. am.~~
 18 ~~of the entity, congregate care workers, and nonclient residents of a caregiver~~

1 specified in sub. (1) (ag) 1. am. to complete a background information form that is
 2 provided to the entity by the department.

History: 1997 a. 27, 237, 281; 1999 a. 9, 32, 56, 185, 186; 2001 a. 109; 2003 a. 321; 2005 a. 149, 184, 277; 2007 a. 20 ss. 1346 to 1358, 9121 (6) (a); 2007 a. 97, 111, 116, 130, 153; 2009 a. 28, 76, 94, 185; 2011 a. 32, 35, 87, 258; 2013 a. 20, 165, 170, 334; 2015 a. 55, 129, 172, 366, 371; 2017 a. 12, 59, 128, 283; 2017 a. 364 s. 49; 2017 a. 365; s. 13.92 (2) (i).

Cross-reference: See also ch. DHS 12, Wis. adm. code.

3 **SECTION 16.** 48.685 (6) (b) 2. of the statutes is amended to read:

4 48.685 (6) (b) 2. For caregivers who are licensed by a county department, for
 5 persons who are nonclient residents or congregate care workers of an entity that is
 6 licensed by a county department, and for other persons specified by the department
 7 by rule, the entity shall send the background information form to the county
 8 department.

History: 1997 a. 27, 237, 281; 1999 a. 9, 32, 56, 185, 186; 2001 a. 109; 2003 a. 321; 2005 a. 149, 184, 277; 2007 a. 20 ss. 1346 to 1358, 9121 (6) (a); 2007 a. 97, 111, 116, 130, 153; 2009 a. 28, 76, 94, 185; 2011 a. 32, 35, 87, 258; 2013 a. 20, 165, 170, 334; 2015 a. 55, 129, 172, 366, 371; 2017 a. 12, 59, 128, 283; 2017 a. 364 s. 49; 2017 a. 365; s. 13.92 (2) (i).

Cross-reference: See also ch. DHS 12, Wis. adm. code.

9 **SECTION 17.** 48.685 (6) (b) 3. of the statutes is amended to read:

10 48.685 (6) (b) 3. For caregivers who are licensed by a child welfare agency, for
 11 persons who are nonclient residents or congregate care workers of an entity that is
 12 licensed by a child welfare agency and for other persons specified by the department
 13 by rule, the entity shall send the background information form to the child welfare
 14 agency.

History: 1997 a. 27, 237, 281; 1999 a. 9, 32, 56, 185, 186; 2001 a. 109; 2003 a. 321; 2005 a. 149, 184, 277; 2007 a. 20 ss. 1346 to 1358, 9121 (6) (a); 2007 a. 97, 111, 116, 130, 153; 2009 a. 28, 76, 94, 185; 2011 a. 32, 35, 87, 258; 2013 a. 20, 165, 170, 334; 2015 a. 55, 129, 172, 366, 371; 2017 a. 12, 59, 128, 283; 2017 a. 364 s. 49; 2017 a. 365; s. 13.92 (2) (i).

Cross-reference: See also ch. DHS 12, Wis. adm. code.

15 **SECTION 18.** 48.981 (7) (a) 4p. of the statutes is amended to read:

16 48.981 (7) (a) 4p. A public or private agency in this state or any other state that
 17 is investigating a person for purposes of licensing the person to operate a foster home
 18 or placing a child for adoption in the home of the person or for the purpose of working
 19 or residing in a licensed child welfare facility.

History: Sup. Ct. Order, 59 Wis. 2d R1, R3 (1973); 1977 c. 355; 1977 c. 447 s. 210; 1979 c. 300; 1983 a. 172, 190, 299, 538; 1985 a. 29 ss. 917 to 930m, 3200 (56); 1985 a. 176, 234; 1987 a. 27, 186, 209; 1987 a. 332 s. 64; 1987 a. 334, 355, 399, 403; 1989 a. 31, 41, 102, 316, 359; 1991 a. 160, 263; 1993 a. 16, 105, 218, 227, 230, 246, 272, 318, 395, 443, 446, 491; 1995 a. 275, 289, 369, 456; 1997 a. 27, 114, 292, 293; 1999 a. 9, 20, 32, 56, 84, 149, 192; 2001 a. 16, 38, 59, 69, 70, 103, 105; 2003 a. 33, 279, 321; 2005 a. 113, 232, 344, 406, 434; 2005 a. 443 s. 265; 2007 a. 20 ss. 1370 to 1373, 9121 (6) (a); 2007 a. 97; 2009 a. 28, 76, 78, 79, 94, 185; 2011 a. 32, 81, 87; 2013 a. 20, 170, 261; 2015 a. 55, 172; 2015 a. 197 s. 51; 2015 a. 365, 367, 381; 2017 a. 12, 47, 59; 2017 a. 364 ss. 6, 49; 2017 a. 365 ss. 25, 111.

SECTION 9106. Nonstatutory provisions; Children and Families.

(1) EMERGENCY RULEMAKING FOR BACKGROUND CHECKS FOR CONGREGATE CARE WORKERS. The department of children and families may promulgate emergency rules under s. 227.24 to implement the background check requirements for congregate care workers under s. 48.685. Notwithstanding s. 227.24 (1) (c) and (2), emergency rules promulgated under this subsection remain in effect until January 1, 2020, or the date on which permanent rules take effect, whichever is sooner. Notwithstanding s. 227.24 (1) (a) and (3), the department is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.

****NOTE: The January 1, 2020 date is a placeholder, please let me know if you would like a different date.

(2) BACKGROUND CHECKS FOR CONGREGATE CARE WORKERS. No later than the first day of the ^{7th} ~~seventh~~ month ^{beginning} after the effective date of this subsection, the department of children and families, the county department ^{under s. 48.02 (2g)}, the child welfare agency, or the congregate care facility ^{as defined} under s. 48.685 (1) (ao) shall perform a comprehensive background check as required by s. 48.685 (2) for all congregate care workers, as defined under s. 48.685 (1) (ap), who are working at a congregate care facility on the effective date of this subsection.

SECTION 9306. Initial applicability; Children and Families.

(1) BACKGROUND CHECKS FOR CONGREGATE CARE WORKERS. The treatment of ^{s.} 48.685 (1) (ao), (ap) and (c) 2., ^(a) (am) 6., ⁽²⁾ (b) (intro.) and 6m., (bd), (bg) and (d), (3) ^{(a) and} (b), (4m) (b) (intro.), ^(4m) (d), (5) (bm) (intro.), (5m), ⁽⁶⁾ (am) and (b) 2. and 3. first

1 applies to a congregate care worker who is hired on the effective date of this
2 subsection.

3 (END)

2019-2020 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1144/?ins
EAW:...

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INS 4-18

SECTION 1. 48.685 (3) (a) of the statutes is amended to read:

48.685 (3) (a) Every 4 years or at any time within that period that the department, a county department, or a child welfare agency considers appropriate, the department, county department, or child welfare agency shall request the information specified in sub. (2) (am) ~~1. to 5. for all caregivers specified in sub. (1) (ag) 1. b. who are licensed to operate an entity, or who are receiving payments under s. 48.623 (6) (am) for operating an entity, and for all persons who are nonclient residents of such a caregiver.~~

History: 1997 a. 27, 237, 281; 1999 a. 9, 32, 56, 185, 186; 2001 a. 109; 2003 a. 321; 2005 a. 149, 184, 277; 2007 a. 20 ss. 1346 to 1358, 9121 (6) (a); 2007 a. 97, 111, 116, 130, 153; 2009 a. 28, 76, 94, 185; 2011 a. 32, 35, 87, 258; 2013 a. 20, 165, 170, 334; 2015 a. 55, 129, 172, 366, 371; 2017 a. 12, 59, 128, 283; 2017 a. 364 s. 49; 2017 a. 365; s. 13.92 (2) (i).

Cross-reference: See also ch. DHS 12, Wis. adm. code.

SECTION 2. 48.685 (3) (b) of the statutes is amended to read:

48.685 (3) (b) Every 4 years or at any time within that period that an entity considers appropriate, the entity shall request the information specified in sub. (2) (b) ~~1m. to 5m. for all persons who are caregivers specified in sub. (1) (ag) 1. a. or am. of the entity and for all nonclient residents of a caregiver specified in sub. (1) (ag) 1. am. of the entity.~~

History: 1997 a. 27, 237, 281; 1999 a. 9, 32, 56, 185, 186; 2001 a. 109; 2003 a. 321; 2005 a. 149, 184, 277; 2007 a. 20 ss. 1346 to 1358, 9121 (6) (a); 2007 a. 97, 111, 116, 130, 153; 2009 a. 28, 76, 94, 185; 2011 a. 32, 35, 87, 258; 2013 a. 20, 165, 170, 334; 2015 a. 55, 129, 172, 366, 371; 2017 a. 12, 59, 128, 283; 2017 a. 364 s. 49; 2017 a. 365; s. 13.92 (2) (i).

Cross-reference: See also ch. DHS 12, Wis. adm. code.

Wheeler, Elizabeth

From: Bork, Matthew - DOA
Sent: Friday, January 11, 2019 3:58 PM
To: Wheeler, Elizabeth
Subject: FFPSA Congregate Care Draft (19-1144_P1)


Good afternoon Elizabeth,

Below I have included the responses from DCF regarding the FFPSA draft 19-1144_P1. Please let me know if you have any questions regarding their response.

Kind regards,
Matt

Comments:

1. Section 2, P. 2, Lines 2-4: Definition of Congregate Care Worker.
 - a. DCF thinks the definition should be “any adult working in a congregate care facility, and does not include an unpaid volunteer” and not include “contractor,” mirroring the federal language. Their concern with the current definition is that it would appear to include, for example, a CISCO driver who drops off meals. DCF does not believe that federal law means to extend to that type of contractor who doesn’t actually work in the facility (although it clearly may apply to other types of contractors who work in the facility).
2. Section 1, p. 1 lines 3-4: Definition of congregate care facility.
 - a. Contractor definition is tied to an entity, but the definition of entity doesn’t precisely include a residential care center for youth. The definition of entity includes a licensed child welfare agency, but the RCCY definition in 48.02(15d) is “a facility operated by a child welfare agency licensed under s. 48.60 for the care and maintenance of children residing in that facility” so it seems to distinguish between the child welfare agency and the RCCY.
 - b. Should this exclude a person to whom a parental custody delegation has been facilitated by an entity?
 - c. Are there other facilities, e.g., ch. 938 facilities, that are not secure or primarily for delinquent youth that should be included: Level 5 foster homes; DHS crisis stabilization facilities? Federal law applies to a CCI –which per PI 18-07 (p.5), includes “group homes, residential treatment centers, shelters and other congregate care settings”.
3. Section 4 – p. 2, line 12-14:
 - a. DCF thinks this provision should align more with the provisions in 48.685(2)(b) (intro) and 6m. It should require that information listed in (2)(am)1. – 5. Is also obtained for congregate care workers. It should also use the same (2)(b) language: “For congregate care workers only, a fingerprint-based check of the national crime information databases...”.
 - b. This provision appears to require a fingerprint check for caregivers in congregate care facilities. Caregivers do not need the fingerprint based checks unless they are congregate care workers. Caregivers themselves are only subject to the DOJ checks – for example, if a caregiver is an unpaid volunteer, e.g., an intern for example, the fingerprint background checks don’t apply.
 - c. 48.685(2)(intro): DCF questions why 48.685(2)(intro) was changed to take out “with respect to a non-client resident of a caregiver.” A non-client resident is not necessarily a person who is an employee or contractor or person under the control of an entity. DCF also questions why in the intro language a caregiver under (1)(ag)1.b. caregiver was listed as an exception to the a congregate care worker provisions.
4. Section 8, p. 3, lines 20-21. Under the current definition of congregate care worker this would apply to congregate worker who merely delivers goods to the entity, which DCF does not think is the intention of the federal law.

5. Should there should be a parallel limitation on release of fingerprint check information for congregate care workers as for foster parents in 48.685(2)(c)? ("The department, county department, or child welfare agency may release any information obtained under this subdivision only as permitted under 42 USC 16962(e).")
6. Section 10, p. 4, lines 13-16, Section 11, lines 20-22. DCF is wondering why lines 13-16 and 20-22 were deleted. If that language is deleted, then 4 year checks apply to applicants for licenses or SG payments.
7. Section 13, p. 5, lines 7-8. "caregiver" should not be deleted. This provision must still apply to caregivers who are not "working" in the entity, e.g., unpaid volunteers. Also, using the term working instead of employer or contractor does not match the definition in this draft of a congregate care worker – an employee or contractor.
8. Section 14, p. 5, Note. Foster parents and subsidized guardians may also be barred from licensing and SG for the referenced convictions for which a rehab cannot remove the bar. So FPs and SGs also may not demonstrate that they are rehabilitated for those convictions.
-  9. Section 17, p. 6, line 15. Remove congregate care workers because this provision applies to caregivers and non-client residents of entities licensed by a county department, and county departments do not license congregate care facilities (GHs, SCs and RCCs).
- √ 10. Section 19, p. 7, line 4. This should be amended to add congregate care facility, not a licensed child welfare facility.



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Division of Executive Budget and Finance
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Direct: (608) 266-2288

Wheeler, Elizabeth

From: Bork, Matthew - DOA
Sent: Tuesday, January 29, 2019 5:07 PM
To: Wheeler, Elizabeth
Subject: RE: FFPSA Congregate Care Draft (19-1144_P1)

Hi Elizabeth,

Below I have included the responses from DCF. You will notice that multiple DCF staff members were making notes to each other; I included these notes in case it helps you to understand what DCF is considering. DCF responses are in green. They did not mention wanting to meet, but let me know if you think that will be necessary.

Thanks,
Matt

1. Section 2, P. 2, Lines 2-4: Definition of Congregate Care Worker. We think the definition should mirror the federal language and federal guidance – any adult working in a congregate care facility, but not including unpaid volunteers. One concern with this definition is that it would appear to include for example a CISCO driver who drops off meals. We don't believe that federal law means to extend to that type of contractor who doesn't actually work in the facility (although it clearly may apply to other types of contractors who work in the facility).
OK – I have taken out reference to a “contractor” here.

2. Section 1, p. 1 lines 3-4: Definition of congregate care facility.
 - a. Contractor definition is tied to an entity, but the definition of entity doesn't precisely include a residential care center for youth. The definition of entity includes a licensed child welfare agency, but the RCCY definition in 48.02(15d) is “a facility operated by a child welfare agency licensed under s. 48.60 for the care and maintenance of children residing in that facility” so it seems to distinguish between the child welfare agency and the RCCY. Does this issue matter since we've also requested that “contractor” not be a part of the congregate care worker definition?
 - b. **The definition of “contractor” is not tied to the definition of “congregate care facility.” Is there something you want changed/added to the definition of “congregate care facility” that isn't included?** Does this matter since we've also requested that “contractor” not be a part of the congregate care worker definition?

Are RCCCY's typically excluded from these background check requirements under current law?

✓ No. Residential care centers for youth are subject to all the background check requirements under 48.685. Additionally, RCCYs are a type of congregate care setting, so they will also be subject to the new congregate care requirements. **Would you like me to change the definition of “entity” to make sure they are included, or do you want RCCCY's to only be subject to the congregate care requirements and not to the requirements for “entities” under s. 48.685? If the latter is your preference, there will need to be some significant changes to the draft.** Yes we understand and expect that.

- c. Do we want to exclude a person to whom a parental custody delegation has been facilitated by an entity?

Since we are removing “contractors” from the definition of congregate care worker (per comment 1.), this person would not be included in the background check requirements. If you want them to be included, I can put them in. No we don’t.

- d. Do we have any other facilities, e.g., ch. 938 facilities that are not secure or primarily for delinquent youth that we should include; Level 5 foster homes (will address with FF model foster care licensing standards legislation); DHS crisis stabilization facilities? Federal law applies to a CCI –which per PI 18-07 (p.5), includes “group homes, residential treatment centers, shelters and other congregate care settings”. **Possibly “approved treatment facilities” under s. 51.01 (2)? Probably DCF is more familiar with the facilities and what the federal requirements would be than I am. Foster homes aren’t currently included but I can add them in if you would like. Please advise.** No other facilities. Sorry this was an internal comment for us to discuss and it was accidentally sent along to you.

3. Section 4 – p. 2, line 12-14:

- a. We think this provision should align more with the provisions in 48.685(2)(b) (intro) and 6m. It should require that information listed in (2)(am)1. – 5. Is also obtained for congregate care workers. It should also use the same (2)(b) language: “For congregate care workers only, a fingerprint-based check of the national crime information databases...”. **Will DCF, the county, or child welfare agency be collecting the background checks information for all congregate care workers or will the congregate care facilities themselves be responsible for collecting the information for congregate care workers who are not the license applicants (see (2) (am) vs. (2) (b))?**
- b. This provision appears to require a fingerprint check for caregivers in congregate care facilities. Caregivers do not need the fingerprint based checks unless they are congregate care workers. Caregivers themselves are only subject to the DOJ checks – for example, if a caregiver is an unpaid volunteer, e.g., an intern for example, the fingerprint background checks don’t apply. **(2) (am) is only referring to caregivers who are also license holders or applicants (see definition in s. (1) (ag) 1. b.). Is it possible that licensees are also volunteers who should be exempt from this? If so, I can change to specify.**
- c. 48.685(2)(intro): We question why 48.685(2)(intro) was changed to take out “with respect to a non-client resident of a caregiver.” A non-client resident is not necessarily a person who is an employee or contractor or person under the control of an entity. **I put this back in.** We also question why in the intro language a caregiver under (1)(ag)1.b. caregiver was listed as an exception to the a congregate care worker provisions. **Because under (2)(am) this information is collected by DCF, the county, or the child welfare agency for these caregivers, as opposed to the entities themselves under (2) (b).**

We discussed budget paper language – agency or entity must require congregate care worker to get fingerprinted/submit to background check – information is sent to DCF. Just to clarify, the results are sent directly to DCF; the results are not sent to the agency or entity.

Never a situation where licensee would be considered an unpaid volunteer, drafter may add note or clarification if believe it is necessary or appropriate.

- 4. Section 8, p. 3, lines 20-21. Under the current definition of congregate care worker this would apply to congregate worker who merely delivers goods to the entity, which we don’t think is the intention of the federal law. **I took “contractor” out of the definition of “congregate care worker” per comment 1, that should fix this problem.**
- 5. Should there should be a parallel limitation on release of fingerprint check information for congregate care workers as for foster parents in 48.685(2)(c)? (“The department, county department, or child welfare agency may release any information obtained under this subdivision only as permitted under 42 USC 16962(e).”) **I can add this in.** Thank you.
- 6. Section 10, p. 4, lines 13-16, Section 11, lines 20-22. We question why lines 13-16 and 20-22 were deleted. If that language is deleted the 4 year checks apply to applicants for licenses or SG payments, which seems non-sensical (although admittedly people would just not apply the 4 year checks to applicants anyway). **I put lines 13-16 back in (although I think it is redundant), but lines 20-22 are redundant. The information in (2) (b) is already limited to caregivers specified in sub. (1) (ag) 1. a. or am. of the entity and nonclient residents of a**

caregiver specified in sub. (1) (ag) 1. am. of the entity. If you want it put back in, I can do that but will have to specify not a caregiver under (1) (ag) 1. b. (unless a response above changes that situation).

For p. 4, lines 13-16, it appears that EW thinks this is redundant because she believes the reference in 48.685(3)(a) means that the information that will be requested every 4 years is not just the info listed under (2)(am)1. to 5., but that it also means the information listed for the caregivers specified in (1)(ag)1.b. But the persons specified in (2)(am)1. also include applicants for licenses and SG, whereas (3(a)) limits the 4 year checks to licensees and people receiving SG payments – and does not include applicants for licenses and SG payments.

For p. 4, lines 20-22, to be consistent with lines 13-16, I think that lines 20-22 should also repeat the specific persons the information should be sought for.

When lines 20-22 are added back in, I believe it should be (2)(b)1m. to 6m.

7. Section 13, p. 5, lines 7-8. "caregiver" should not be deleted. This provision must still apply to caregivers who are not "working" in the entity, e.g., unpaid volunteer. Also, using the term working instead of employer or contractor does not match the definition in this draft of a congregate care worker – an employee or contractor. **So if we change the definition of congregate care worker to "any adult working in a congregate care facility, and does not include an unpaid volunteer" how do you want this section to read? I believe the existing language does not accomplish what you describe here – i.e. it uses the term "employment." Are unpaid volunteers "employed as caregivers"? I would assume that they are not. However, the language as drafted I believe would include unpaid caregivers as they are "working" at the entity. I suppose I could say "working as a congregate care worker or caregiver or residing at" or I could say "working, volunteering, or residing"– would that be better?**

I believe the main issue is that if we change the definition of congregate care worker to "any adult working in a congregate care facility, but not including unpaid volunteers" this language may be confusing because in this provision "working" would include an unpaid volunteer, which is seems contrary to the meaning of working in the congregate care definition. Also, I think another problem with amendment may be that the current s. 48.685(4m)(d) may inaccurately refer to "a bar to employment as a caregiver or residence at an entity" since I think the intent was that we could notify an entity of a caregiver who is not employed but is just volunteering (although I wasn't involve in writing this provision so can't say for sure). Maybe we could say "could result in a bar to being a congregate care worker, or being a caregiver or residing at an entity". Or it may work best to split congregate care workers out separately from the caregivers and residers.

8. Section 14, p. 5, Note. Foster parents and subsidized guardians may also be barred from licensing and SG for the referenced convictions for which a rehab cannot remove the bar. So FPs and SGs also may not demonstrate that they are rehabilitated for those convictions. **Correct, that is what this section does. The request asked to add "congregate care worker" to this section, however, and since foster homes and subsidized guardianships are not "congregate care facilities" under this bill, I am unclear why the addition is needed.**

I think we asked for this addition because we want to bar congregate care workers from being rehabbed to remove the bar for the specific convictions. But it looks like just foster parents and people wanting SG payments are barred from rehab for these convictions. I don't see that other entities, group homes, shelter care facilities, etc. are barred from rehab for these convictions – so do we want to bar the congregate workers too?

I agree, it does not make sense to add the congregate workers here. It makes more sense to add them to 48.685(4m)(b).

9. Section 17, p. 6, line 15. Remove congregate care workers because this provision applies to caregivers and non-client residents of entities licensed by a county department, and county departments do not license congregate care facilities (GHs, SCs and RCCs). **OK.**

10. Section 19, p. 7, line 4. This should be amended to add congregate care facility, not a licensed child welfare facility. **OK.**

From: Wheeler, Elizabeth A - LEGIS <Elizabeth.Wheeler@legis.wisconsin.gov>
Sent: Wednesday, January 16, 2019 9:11 AM
To: Bork, Matthew - DOA <Matthew.Bork@wisconsin.gov>
Subject: RE: FFPSA Congregate Care Draft (19-1144_P1)

See my comments/questions in bold below. Let me know if you want to discuss or meet. Thanks.

Elizabeth Wheeler
Legislative Attorney
Wisconsin Legislative Reference Bureau
P.O. Box 2037
Madison, WI 53701-2037
Direct: 608-504-5880
Elizabeth.wheeler@legis.wisconsin.gov

From: Bork, Matthew - DOA <Matthew.Bork@wisconsin.gov>
Sent: Friday, January 11, 2019 3:58 PM
To: Wheeler, Elizabeth <Elizabeth.Wheeler@legis.wisconsin.gov>
Subject: FFPSA Congregate Care Draft (19-1144_P1)

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- b. Should this exclude a person to whom a parental custody delegation has been facilitated by an entity? **Since we are removing "contractors" from the definition of congregate care worker (per comment 1.), this person would not be included in the background check requirements. If you want them to be included, I can put them in.**
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6. Section 10, p. 4, lines 13-16, Section 11, lines 20-22. DCF is wondering why lines 13-16 and 20-22 were deleted. If that language is deleted, then 4 year checks apply to applicants for licenses or SG payments. **I put lines 13-16 back in (although I think it is redundant), but lines 20-22 are redundant. The information in (2) (b) is already limited to caregivers specified in sub. (1) (ag) 1. a. or am. of the entity and nonclient residents of a caregiver specified in sub. (1) (ag) 1. am. of the entity. If you want it put back in, I can do that but will have to specify not a caregiver under (1) (ag) 1. b. (unless a response above changes that situation).**
7. Section 13, p. 5, lines 7-8. "caregiver" should not be deleted. This provision must still apply to caregivers who are not "working" in the entity, e.g., unpaid volunteers. Also, using the term working instead of employer or contractor does not match the definition in this draft of a congregate care worker – an employee or contractor. **So if we change the definition of congregate care worker to "any adult working in a congregate care facility, and does not include an unpaid volunteer" how do you want this section to read? I believe the existing language does not accomplish what you describe here – i.e. it uses the term "employment." Are unpaid volunteers "employed as caregivers"? I would assume that they are not. However, the language as drafted I believe would include unpaid caregivers as they are "working" at the entity. I suppose I could say "working as a congregate care worker or caregiver or residing at" or I could say "working, volunteering, or residing"– would that be better?**
8. Section 14, p. 5, Note. Foster parents and subsidized guardians may also be barred from licensing and SG for the referenced convictions for which a rehab cannot remove the bar. So FPs and SGs also may not demonstrate that they are rehabilitated for those convictions. **Correct, that is what this section does. The request asked to add "congregate care worker" to this section, however, and since foster homes and subsidized guardianships are not "congregate care facilities" under this bill, I am unclear why the addition is needed.**
9. Section 17, p. 6, line 15. Remove congregate care workers because this provision applies to caregivers and non-client residents of entities licensed by a county department, and county departments do not license congregate care facilities (GHs, SCs and RCCs). **OK.**
10. Section 19, p. 7, line 4. This should be amended to add congregate care facility, not a licensed child welfare facility. **Ok.**



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State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-1144/P1
EAW:ahc

in: 2101

DOA:.....Bork, BB0155 - Background checks for congregate care workers

FOR 2019-2021 BUDGET -- NOT READY FOR INTRODUCTION

INSERT

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

CHILDREN

workers at a facility

This bill requires a licensing entity to perform a fingerprint-based background check for all ~~employees and contractors of congregate care facilities~~, defined under the bill to be a group home, shelter care facility, or residential care center for children and youth, as required under federal law. Under current law, only caregivers and nonclient residents of a congregate care facility are required to receive a background check.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

WSI-2

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2 SECTION 1. 48.685 (1) (ao) of the statutes is created to read:

3 48.685 (1) (ao) "Congregate care facility" means a group home, shelter care
4 facility, or residential care center for children and youth.

1 SECTION 2. 48.685 (1) (ap) of the statutes is created to read:

2 48.685 (1) (ap) "Congregate care worker" means an adult employee or
3 contractor of a congregate care facility. "Congregate care worker" does not include
4 an unpaid volunteer.

who works in
employee or

5 *****NOTE:** Please review the definition of "contractor" under s. 48.685 (1) (ar) to
ensure this definition is consistent with your intent.

6 SECTION 3. 48.685 (1) (c) 2. of the statutes is amended to read:

7 48.685 (1) (c) 2. A violation of s. 940.01, 940.02, 940.03, 940.05, 940.12, 940.19
8 (2), (4), (5), or (6), 940.22 (2) or (3), 940.225 (1), (2), or (3), 940.285 (2), 940.29, 940.295,
9 942.09 (2), 948.02 (1) or (2), 948.025, 948.03 (2) or (5) (a) 1., 2., 3., or 4., 948.05,
10 948.051, 948.055, 948.06, 948.07, 948.08, 948.081, 948.085, 948.11 (2) (a) or (am),
11 948.12, 948.13, 948.21 (2), 948.215, 948.30, or 948.53.

12 SECTION 4. 48.685 (2) (am) 6. of the statutes is created to read:

13 48.685 (2) (am) 6. For a caregiver specified in sub. (1) (ag) 1. b. of a congregate
14 care facility only, a fingerprint-based check of the national crime information
databases, as defined in 28 USC 534 (f) (3) (A).

15 *****NOTE:** Do nonclient residents of congregate care facilities need to receive the
fingerprint check?

16 SECTION 5. 48.685 (2) (b) (intro.) of the statutes is amended to read:

17 48.685 (2) (b) (intro.) Every entity shall obtain all of the following with respect
18 to a caregiver specified in sub. (1) (ag) 1. a. or am. of the entity and with respect to
19 a nonclient resident of a caregiver specified in sub. (1) (ag) 1. am. and with respect
20 to a congregate care worker, except a caregiver specified in sub. (1) (ag) 1. b., of the
entity:

21 *****NOTE:** I deleted a "nonclient resident of a caregiver specified in sub. (1) (ag) 1.
am., because everyone who falls under sub. (1) (ag) 1. am. is already included in this
paragraph.

SECTION 6. 48.685 (2) (b) 6m. of the statutes is created to read:

11/22/2019

INS
2-1515

plain

plain

1 48.685 (2) (b) 6m. For congregate care workers only, a fingerprint-based check
2 of the national crime information databases, as defined in 28 USC 534 (f) (3) (A).

NS
3.3
④

3 ✓ SECTION 7. 48.685 (2) (bd) of the statutes is amended to read:

and (ba)

4 48.685 (2) (bd) Notwithstanding pars. (am) and (b), the department, a county
5 department, or a child welfare agency is not required to obtain the information
6 specified in par. (am) 1. to 5. 6, and an entity is not required to obtain the information
7 specified in par. (b) 1m. to 5m. 6m, with respect to a person under 18 years of age
8 whose background information form under sub. (6) (am) indicates that the person is
9 not ineligible to be employed at, contracted with, or permitted to reside at an entity
10 or permitted to reside with a caregiver specified under sub. (1) (ag) 1. am. of the entity
11 for a reason specified in sub. (4m) (b) 1. to 5. and with respect to whom the
12 department, county department, child welfare agency, or entity otherwise has no
13 reason to believe that the person is ineligible to be employed, contracted with, or
14 permitted to reside at an entity for any of those reasons. This paragraph does not
15 preclude the department, a county department, or a child welfare agency from
16 obtaining, at its discretion, the information specified in par. (am) 1. to 5. with respect
17 to a person described in this paragraph who is a nonclient resident or a prospective
18 nonclient resident of an entity.

the department is not required to obtain the information specified in par. (ba)

19 ✓ SECTION 8. 48.685 (2) (bg) of the statutes is amended to read:

20 48.685 (2) (bg) If an entity employs or contracts with a caregiver or congregate
21 care worker for whom, within the last year, the information required under par. (b)
22 1m. to 3m. and 5m. and 6m. has already been obtained by another entity, the entity
23 may obtain that information from that other entity, which shall provide the
24 information, if possible, to the requesting entity. If an entity cannot obtain the
25 information required under par. (b) 1m. to 3m. and 5m. and 6m. from another entity

plain

1 or if an entity has reasonable grounds to believe that any information obtained from
2 another entity is no longer accurate, the entity shall obtain that information from the
3 sources specified in par. (b) 1m. to 3m. ^{plain} and 5m. and 6m.

4 **SECTION 9.** 48.685 (2) (d) of the statutes is amended to read: ^{AA}

5 48.685 (2) (d) Every entity shall maintain, or shall contract with another
6 person to maintain, the most recent background information obtained on a caregiver
7 or congregate care worker under par. (b). The information shall be made available
8 for inspection by authorized persons, as defined by the department by rule.

9 **SECTION 10.** 48.685 (3) (a) of the statutes is amended to read:

10 48.685 (3) (a) Every 4 years or at any time within that period that the
11 department, a county department, or a child welfare agency considers appropriate,
12 the department, county department, or child welfare agency shall request the
13 information specified in sub. (2) (am) 1. to 5. for all caregivers specified in sub. (1) (ag)
14 1. b. who are licensed to operate an entity, or who are receiving payments under s.
15 48.623 (6) (am) for operating an entity, and for all persons who are nonclient
16 residents of such a caregiver.

17 **SECTION 11.** 48.685 (3) (b) of the statutes is amended to read:

18 48.685 (3) (b) Every 4 years or at any time within that period that an entity
19 considers appropriate, the entity shall request the information specified in sub. (2)
20 (b) 1m. to 5m. for all persons who are ^{(Subject to sub. (2)(b))} caregivers specified in sub. (1) (ag) 1. a. or am.
21 of the entity and for all nonclient residents of a caregiver specified in sub. (1) (ag) 1.
22 am. of the entity.

23 **SECTION 12.** 48.685 (4m) (b) (intro.) of the statutes is amended to read: ^{AA}

24 48.685 (4m) (b) (intro.) Notwithstanding s. 111.335, and except as provided in
25 sub. (5), an entity may not employ or contract with a caregiver specified in sub. (1)

Handwritten circled text: "NS 4-24"

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Handwritten circled text: "NS 4-23"

1 (ag) 1. a. or am. or a congregate care worker or permit a nonclient resident to reside
2 at the entity or with a caregiver specified in sub. (1) (ag) 1. am. of the entity if the
3 entity knows or should have known any of the following:

4 ✓ **SECTION 13.** 48.685 (4m) (d) of the statutes is amended to read: ¹⁰

5 48.685 (4m) (d) If the department learns that a caregiver, congregate care
6 worker, or nonclient resident is the subject of a pending investigation for a crime or
7 offense that, under this subsection ~~or sub. (5)~~, could result in a bar to employment
8 ~~as a caregiver or residence~~ ^{being a caregiver} ~~working or residing~~ at an entity, the department may
9 notify the entity of the pending investigation.

10 ✓ **SECTION 14.** 48.685 (5) (bm) (intro.) of the statutes is amended to read:

11 48.685 (5) (bm) (intro.) For purposes of licensing a foster home for the
12 placement of a child or of providing subsidized guardianship payments to an interim
13 caretaker under s. 48.623 (6) (am) or to a person seeking those payments as a
14 successor guardian under s. 48.623 (6) (bm), no person, including a caregiver,
15 congregate care worker, or nonclient resident under this section, who has been
16 convicted of any of the following offenses may be permitted to demonstrate that he
17 or she has been rehabilitated:


9
18 ****NOTE: Please verify that this change is correct—foster homes are not
congregate care facilities under this draft, and subsidized guardians are not necessarily
congregate care workers under this section, so unless there is a specific reason that they
need to be added to this section, I'd suggest taking it out. Another alternative would be
to take out the "including a caregiver or nonclient resident" language and just leave it as
"no person," which includes everyone as is.

19 ✓ **SECTION 15.** 48.685 (5m) of the statutes is amended to read: ¹⁰

20 48.685 (5m) Notwithstanding s. 111.335, the department may refuse to license
21 a person to operate an entity, a county department or a child welfare agency may
22 refuse to license a foster home under s. 48.62, the department in a county having a
population of 750,000 or more or a county department may refuse to provide

1 subsidized guardianship payments to a person under s. 48.623 (6), and an entity may
2 refuse to employ or contract with a caregiver or congregate care worker or permit a
3 nonclient resident to reside at the entity or with a caregiver specified in sub. (1) (ag)
4 1. am. of the entity if the person has been convicted of an offense that is not a serious
5 crime, but that is, in the estimation of the department, county department, child
6 welfare agency, or entity, substantially related to the care of a client.

7 **SECTION 16.** 48.685 (6) (am) of the statutes is amended to read:

8 48.685 (6) (am) Every 4 years an entity shall require all of its caregivers ~~and~~
9 ~~all, nonclient residents of the entity or of a caregiver specified in sub. (1) (ag) 1. am.~~
10 ~~of the entity, congregate care workers, and nonclient residents of a caregiver~~
11 ~~specified in sub. (1) (ag) 1. am.~~ to complete a background information form that is
12 provided to the entity by the department. 

13 **SECTION 17.** 48.685 (6) (b) 2. of the statutes is amended to read:

14 48.685 (6) (b) 2. For caregivers who are licensed by a county department, for
15 persons who are nonclient residents or congregate care workers of an entity that is
16 licensed by a county department, and for other persons specified by the department
17 by rule, the entity shall send the background information form to the county
18 department.

19 **SECTION 18.** 48.685 (6) (b) 3. of the statutes is amended to read:

20 48.685 (6) (b) 3. For caregivers who are licensed by a child welfare agency, for
21 persons who are nonclient residents or congregate care workers of an entity that is
22 licensed by a child welfare agency and for other persons specified by the department
23 by rule, the entity shall send the background information form to the child welfare
24 agency.

25 **SECTION 19.** 48.981 (7) (a) 4p. of the statutes is amended to read:

1 48.981 (7) (a) 4p. A public or private agency in this state or any other state that
2 is investigating a person for purposes of licensing the person to operate a foster home
3 or placing a child for adoption in the home of the person or for the purpose of working
4 or residing in a licensed child welfare facility.

*congregate care facility, as defined under s. 48.685(1)(ao) or
e.i.n*

5 **SECTION 9106. Nonstatutory provisions; Children and Families.**

6 (1) EMERGENCY RULE MAKING FOR BACKGROUND CHECKS FOR CONGREGATE CARE
7 WORKERS. The department of children and families may promulgate emergency rules
8 under s. 227.24 to implement the background check requirements for congregate
9 care workers under s. 48.685. Notwithstanding s. 227.24 (1) (c) and (2), emergency
10 rules promulgated under this subsection remain in effect until January 1, 2020, or
11 the date on which permanent rules take effect, whichever is sooner.
12 Notwithstanding s. 227.24 (1) (a) and (3), the department is not required to provide
13 evidence that promulgating a rule under this subsection as an emergency rule is
14 necessary for the preservation of the public peace, health, safety, or welfare and is
15 not required to provide a finding of emergency for a rule promulgated under this
16 subsection.

****NOTE: The January 1, 2020, date is a placeholder, please let me know if you would like a different date.

17 (2) BACKGROUND CHECKS FOR CONGREGATE CARE WORKERS. No later than the first
18 day of the 7th month beginning after the effective date of this subsection, the
19 department of children and families, the county department as defined ^{e.i.n} (under s.
20 48.02 (2g), the child welfare agency, or the congregate care facility as defined ^{e.i.n} under
21 s. 48.685 (1) (ao) shall perform a comprehensive background check as required by s.
22 48.685 (2) for all congregate care workers, as defined ^{e.i.n} (under s. 48.685 (1) (ap), who
23 are working at a congregate care facility on the effective date of this subsection.

INS 8.1

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SECTION 9306. Initial applicability; Children and Families.

(1) BACKGROUND CHECKS FOR CONGREGATE CARE WORKERS. The treatment of s. 48.685 (1) (ao), (ap), and (c) 2., (2) (am) 6., (b) (intro.) and 6m., (bd), (bg), and (d), (3) (a) and (b), (4m) (b) (intro.) and (d), (5) (bm) (intro.), (5m), and (6) (am) and (b) 2. and 3. first applies to a congregate care worker who is hired on the effective date of this subsection.

(END)

564

INS 1-2

SECTION 1. 20.435 (6) (jm) of the statutes is amended to read:

20.435 (6) (jm) *Licensing and support services.* The amounts in the schedule for the purposes specified in ss. 48.685 (2) (am) and, (b), and (ba), (3) (a) and, (b), and (c), and (5) (a), 48.686 (2) (am), (3) (am) and (bm), and (5) (a), 49.45 (47), 50.02 (2), 50.025, 50.065 (2) (am) and (b) 1., (3) (a) and (b), and (5), 50.13, 50.135, 50.36 (2), 50.49 (2) (b), 50.495, 50.52 (2) (a), 50.57, 50.981, and 146.40 (4r) (b) and (er), and subch. VI of ch. 50 and to conduct health facilities plan and rule development activities, for accrediting nursing homes, convalescent homes, and homes for the aged, to conduct capital construction and remodeling plan reviews under ss. 50.02 (2) (b) and 50.36 (2), and for the costs of inspecting, licensing or certifying, and approving facilities, issuing permits, and providing technical assistance, that are not specified under any other paragraph in this subsection. All moneys received under ss. 48.685 (8), 48.686 (2) (ag), 49.45 (42) (c), 49.45 (47) (c), 50.02 (2), 50.025, 50.065 (8), 50.13, 50.36 (2), 50.49 (2) (b), 50.495, 50.52 (2) (a), 50.57, 50.93 (1) (c), and 50.981, all moneys received from fees for the costs of inspecting, licensing or certifying, and approving facilities, issuing permits, and providing technical assistance, that are not specified under any other paragraph in this subsection, and all moneys received under s. 50.135 (2) shall be credited to this appropriation account.

History: 1971 c. 125 ss. 138 to 155, 522 (1); 1971 c. 211, 215, 302, 307, 322; 1973 c. 90, 198, 243; 1973 c. 284 s. 32; 1973 c. 308, 321, 322, 333, 336; 1975 c. 39 ss. 153 to 173, 732 (1), (2); 1975 c. 41 s. 52; 1975 c. 82, 224, 292; 1975 c. 413 s. 18; 1975 c. 422, 423; 1975 c. 430 ss. 1, 2, 80; 1977 c. 29 ss. 236 to 273, 1657 (18); 1977 c. 112; 1977 c. 203 s. 106; 1977 c. 213, 233, 327; 1977 c. 354 s. 101; 1977 c. 359; 1977 c. 418 ss. 129 to 137, 924 (18) (d), 929 (55); 1977 c. 428 s. 115; 1977 c. 447; 1979 c. 32 s. 92 (11); 1979 c. 34, 48; 1979 c. 102 s. 237; 1979 c. 111, 175, 177; 1979 c. 221 ss. 118g to 133, 2202 (20); 1979 c. 238, 300, 331, 361; 1981 c. 20 ss. 301 to 356b, 2202 (20) (b), (d), (g); 1981 c. 93 ss. 3 to 8, 186; 1981 c. 298, 314, 317, 359, 390; 1983 a. 27 ss. 318 to 410, 2202 (20); 1983 a. 192, 199, 245; 1983 a. 333 s. 6; 1983 a. 363, 398, 410, 427; 1983 a. 435 ss. 2, 3, 7; 1983 a. 538; 1985 a. 24, 29, 56, 73, 120, 154, 176, 255, 281, 285, 332; 1987 a. 27, 339, 368, 398, 399, 402; 1987 a. 403 ss. 25, 256; 1987 a. 413; 1989 a. 31, 53; 1989 a. 56 ss. 13, 259; 1989 a. 102; 1989 a. 107 ss. 11, 13, 17 to 37; 1989 a. 120, 122, 173, 199, 202, 318, 336, 359; 1991 a. 6, 39, 189, 269, 275, 290, 315, 322; 1993 a. 16, 27, 76, 98, 99, 168, 183, 377, 437, 445, 446, 450, 469, 479, 490, 491; 1995 a. 27 ss. 806 to 961r, 9126 (19); 1995 a. 77, 98; 1995 a. 216 ss. 26, 27; 1995 a. 266, 276, 289, 303, 404, 417, 440, 448, 464, 468; 1997 a. 27 ss. 211, 214, 216, 217, 527 to 609; 1997 a. 35, 105, 231, 237, 280, 293; 1999 a. 5, 9, 32, 52, 84, 103, 109, 113, 133, 185, 186; 2001 a. 16, 69, 103, 105; 2003 a. 33, 139, 186, 318, 320, 326, 327; 2005 a. 15, 22; 2005 a. 25 ss. 299 to 331, 2498 to 2500, 2510; 2005 a. 74, 107, 199, 228, 264, 388, 406, 434; 2007 a. 20 ss. 331 to 422, 9121 (6) (a); 2007 a. 39, 88, 107, 111, 130; 2009 a. 2, 15; 2009 a. 28 ss. 325 to 470, 485, 488, 490; 2009 a. 76, 180, 190, 219, 274, 276, 279, 318, 334; 2011 a. 32, 70, 257; 2013 a. 20, 92; 2013 a. 116 s. 31; 2013 a. 126, 127, 129, 131, 132, 137; 2013 a. 166 s. 77; 2013 a. 168 s. 21; 2013 a. 195, 203, 246; 2015 a. 55, 153, 172, 195, 265, 274; 2017 a. 12, 28; 2017 a. 59 ss. 369 to 392, 451; 2017 a. 96, 184, 186, 250, 261, 266, 296.

↵ **SECTION 2.** 20.437 (1) (jm) of the statutes is amended to read:

20.437 (1) (jm) *Licensing activities.* All moneys received from licensing activities under ss. 48.60, 48.62, 48.625, and 938.22 (7) and from fees under ss. 48.615, 48.625, 48.685 (8), and 938.22 (7) (b) and (c), for the costs of licensing child welfare agencies under s. 48.60, foster homes under s. 48.62, group homes under s. 48.625, and shelter care facilities under s. 938.22 (7) and for the purposes specified in s. 48.685 (2) (am) and, (b), and (ba), (3) (a) and, (b), and (c), and (5) (a) with respect to those entities.

History: 2007 a. 20 ss. 331, 335, 340, 341, 342, 344 to 352, 354 to 368g, 374 to 376, 380, 381, 401, 404, 405, 423 to 437, 447, 448, 450, 451, 453, 453p, 454, 456 to 458, 460e, 463, 465 to 472, 474 to 480, 9121 (6) (a); 2009 a. 28 ss. 471 to 513, 522; 2009 a. 76, 180, 185, 265, 339; 2011 a. 32, 258; 2013 a. 20, 170, 334; 2015 a. 55 ss. 660, 662, 665, 720 to 723n, 811, 812; 2015 a. 128, 172; 2017 a. 59, 185, 260, 261; s. 35.17 correction in (1) (kz).

INS 2-15

↵ **SECTION 3.** 48.685 (2) (am) 5. of the statutes is amended to read:

48.685 (2) (am) 5. Information maintained by the department of health services under this section and under ss. 48.623 (6) (am) 2. and (bm) 5., 48.75 (1m), and 48.979 (1) (b) regarding any denial to the person of a license, or continuation or renewal of a license to operate an entity, or of payments under s. 48.623 (6) for operating an entity, for a reason specified in sub. (4m) (a) 1. to 5. and regarding any denial to the person of employment at, a contract with, or permission to reside at an entity or of permission to reside with a caregiver specified in sub. (1) (ag) 1. am. for a reason specified in sub. (4m) (b) 1. to 5. If the information obtained under this subdivision indicates that the person has been denied a license, or continuation or renewal of a license, payments, employment, a contract, or permission to reside as described in this subdivision, the department, a county department, or a child welfare agency

need not obtain the information specified in subds. 1. to 4, and the department need not conduct a fingerprint-based background check under par. (ba).

History: 1997 a. 27, 237, 281; 1999 a. 9, 32, 56, 185, 186; 2001 a. 109; 2003 a. 321; 2005 a. 149, 184, 277; 2007 a. 20 ss. 1346 to 1358, 9121 (6) (a); 2007 a. 97, 111, 116, 130, 153; 2009 a. 28, 76, 94, 185; 2011 a. 32, 35, 87, 258; 2013 a. 20, 165, 170, 334; 2015 a. 55, 129, 172, 366, 371; 2017 a. 12, 59, 128, 283; 2017 a. 364 s. 49; 2017 a. 365; s. 13.92 (2) (i).

Cross-reference: See also ch. DHS 12, Wis. adm. code.

INS 3-3

↙ **SECTION 4.** 48.685 (2) (b) 5m. of the statutes is amended to read:

48.685 (2) (b) 5m. Information maintained by the department of health services under this section and under ss. 48.623 (6) (am) 2. and (bm) 5., 48.75 (1m), and 48.979 (1) (b) regarding any denial to the person of a license, or continuation or renewal of a license to operate an entity, or of payments under s. 48.623 (6) for operating an entity, for a reason specified in sub. (4m) (a) 1. to 5. and regarding any denial to the person of employment at, a contract with, or permission to reside at an entity or of permission to reside with a caregiver specified in sub. (1) (ag) 1. am. for a reason specified in sub. (4m) (b) 1. to 5. If the information obtained under this subdivision indicates that the person has been denied a license, continuation or renewal of a license, a contract, payments, employment, or permission to reside as described in this subdivision, the entity need not obtain the information specified in subds. 1m. to 4m, and the department need not conduct a fingerprint-based background check under par. (ba).

History: 1997 a. 27, 237, 281; 1999 a. 9, 32, 56, 185, 186; 2001 a. 109; 2003 a. 321; 2005 a. 149, 184, 277; 2007 a. 20 ss. 1346 to 1358, 9121 (6) (a); 2007 a. 97, 111, 116, 130, 153; 2009 a. 28, 76, 94, 185; 2011 a. 32, 35, 87, 258; 2013 a. 20, 165, 170, 334; 2015 a. 55, 129, 172, 366, 371; 2017 a. 12, 59, 128, 283; 2017 a. 364 s. 49; 2017 a. 365; s. 13.92 (2) (i).

Cross-reference: See also ch. DHS 12, Wis. adm. code.

INS 3-3

↙ **SECTION 5.** 48.685 (2) (ba) of the statutes is created to read:^{3a}

48.685 (2) (ba) If the person who is the subject of the search under par. (am) or (b) is a congregate care worker, the department shall request a fingerprint-based

check of the national crime information databases, as defined in 28 USC 534 (f) (3)

(A). The department may not use any information obtained under this subdivision ^{paragraph} for any reason other than a search of the person's background under par. (am) or (b).

****NOTE: You asked to include a reference to release of information under 42 USC 16962 (e) (now 34 USC 20962 (e)). However, that provision only applies to background checks for foster parents, adoptive parents, and school workers, so I mirrored language in par. (c) 2. for limiting the use of the information obtained here instead. OK?

****NOTE: Is this the correct procedure? The entity would collect all other background check materials and DCF would perform the fingerprint based check?

SECTION 6. 48.685 (2) (bb) of the statutes is amended to read:

48.685 (2) (bb) If information obtained under par. (am) or, (b), or (ba) indicates a charge of a serious crime, but does not completely and clearly indicate the final disposition of the charge, the department, county department, child welfare agency, or entity shall make every reasonable effort to contact the clerk of courts to determine the final disposition of the charge. If a background information form under sub. (6) (a) or (am) indicates a charge or a conviction of a serious crime, but information obtained under par. (am) or, (b), or (ba) does not indicate such a charge or conviction, the department, county department, child welfare agency, or entity shall make every reasonable effort to contact the clerk of courts to obtain a copy of the criminal complaint and the final disposition of the complaint. If information obtained under par. (am) or, (b), or (ba), a background information form under sub. (6) (a) or (am), or any other information indicates a conviction of a violation of s. 940.19 (1), 940.195, 940.20, 941.30, 942.08, 947.01 (1), or 947.013 obtained not more than 5 years before the date on which that information was obtained, the department, county department, child welfare agency, or entity shall make every reasonable effort to

contact the clerk of courts to obtain a copy of the criminal complaint and judgment of conviction relating to that violation.

History: 1997 a. 27, 237, 281; 1999 a. 9, 32, 56, 185, 186; 2001 a. 109; 2003 a. 321; 2005 a. 149, 184, 277; 2007 a. 20 ss. 1346 to 1358, 9121 (6) (a); 2007 a. 97, 111, 116, 130, 153; 2009 a. 28, 76, 94, 185; 2011 a. 32, 35, 87, 258; 2013 a. 20, 165, 170, 334; 2015 a. 55, 129, 172, 366, 371; 2017 a. 12, 59, 128, 283; 2017 a. 364 s. 49; 2017 a. 365; s. 13.92 (2) (i).

Cross-reference: See also ch. DHS 12, Wis. adm. code.

INS 4-4

☛ **SECTION 7.** 48.685 (2) (c) 1. of the statutes is amended to read:

48.685 (2) (c) 1. If the person who is the subject of the search under par. (am) is seeking an initial license to operate a foster home or is seeking relicensure after a break in licensure, the department, county department, or child welfare agency shall request under ~~42 USC 16962~~ 34 USC 20962 (b) a fingerprint-based check of the national crime information databases, as defined in 28 USC 534 (f) (3) (A). If that person is seeking subsidized guardianship payments under s. 48.623 (6), the department in a county having a population of 750,000 or more or county department shall request that fingerprint-based check. The department, county department, or child welfare agency may release any information obtained under this subdivision only as permitted under ~~42 USC 16962~~ 34 USC 20962 (e).

History: 1997 a. 27, 237, 281; 1999 a. 9, 32, 56, 185, 186; 2001 a. 109; 2003 a. 321; 2005 a. 149, 184, 277; 2007 a. 20 ss. 1346 to 1358, 9121 (6) (a); 2007 a. 97, 111, 116, 130, 153; 2009 a. 28, 76, 94, 185; 2011 a. 32, 35, 87, 258; 2013 a. 20, 165, 170, 334; 2015 a. 55, 129, 172, 366, 371; 2017 a. 12, 59, 128, 283; 2017 a. 364 s. 49; 2017 a. 365; s. 13.92 (2) (i).

Cross-reference: See also ch. DHS 12, Wis. adm. code.

****NOTE: The federal code section was renumbered.

INS 4-23

⌋ **SECTION 8.** 48.685 (3) (c) of the statutes is created to read:

48.685 (3) (c) Every 4 years or at any time within that period that the department considers appropriate, the department shall request the information specified in sub. (2) (ba) for all persons who are congregate care workers.

INS 5-4

✦ **SECTION 9.** 48.685 (4m) (c) of the statutes is amended to read:^{3/7}

48.685 (4m) (c) If the background information form completed by a person under sub. (6) (am) indicates that the person is not ineligible to be employed or contracted with for a reason specified in par. (b) 1. to 5., an entity may employ or contract with the person for not more than 45 days pending the receipt of the information sought under sub. ^{plain} subs. (2) (am) ~~or~~ [↓] (b) and [↓] (ba). If the background information form completed by a person under sub. (6) (am) indicates that the person is not ineligible to be permitted to reside at an entity or with a caregiver specified in sub. (1) (ag) 1. am. for a reason specified in par. (b) 1. to 5. and if an entity otherwise has no reason to believe that the person is ineligible to be permitted to reside at an entity or with that caregiver for any of those reasons, the entity may permit the person to reside at the entity or with the caregiver for not more than 45 days pending receipt of the information sought under sub. ^{plain} subs. (2) (am) ~~or~~ [↓] (b) and [↓] (ba). An entity shall provide supervision for a person who is employed, contracted with, or permitted to reside as permitted under this paragraph. (not)

History: 1997 a. 27, 237, 281; 1999 a. 9, 32, 56, 185, 186; 2001 a. 109; 2003 a. 321; 2005 a. 149, 184, 277; 2007 a. 20 ss. 1346 to 1358, 9121 (6) (a); 2007 a. 97, 111, 116, 130, 153; 2009 a. 28, 76, 94, 185; 2011 a. 32, 35, 87, 258; 2013 a. 20, 165, 170, 334; 2015 a. 55, 129, 172, 366, 371; 2017 a. 12, 59, 128, 283; 2017 a. 364 s. 49; 2017 a. 365; s. 13.92 (2) (i).

Cross-reference: See also ch. DHS 12, Wis. adm. code.

INS 6-13

✦ **SECTION 10.** 48.685 (8) of the statutes is amended to read:^{3/7}

48.685 (8) The department, the department of health services, a county department, or a child welfare agency may charge a fee for obtaining the information required under sub. (2) (am) or (3) (a), for providing information to an entity to enable the entity to comply with sub. (2) (b) or (3) (b), or for obtaining and submitting

fingerprints under sub. (2) (ba) or (bm) or (3) (c). The fee may not exceed the reasonable cost of obtaining the information or of obtaining and submitting fingerprints. No fee may be charged to a nurse aide, as defined in s. 146.40 (1) (d), for obtaining or maintaining information or for obtaining and submitting fingerprints if to do so would be inconsistent with federal law.

History: 1997 a. 27, 237, 281; 1999 a. 9, 32, 56, 185, 186; 2001 a. 109; 2003 a. 321; 2005 a. 149, 184, 277; 2007 a. 20 ss. 1346 to 1358, 9121 (6) (a); 2007 a. 97, 111, 116, 130, 153; 2009 a. 28, 76, 94, 185; 2011 a. 32, 35, 87, 258; 2013 a. 20, 165, 170, 334; 2015 a. 55, 129, 172, 366, 371; 2017 a. 12, 59, 128, 283; 2017 a. 364 s. 49; 2017 a. 365; s. 13.92 (2) (i).

Cross-reference: See also ch. DHS 12, Wis. adm. code.

INS 8-1

SECTION 9306. Initial applicability; Children and Families.

~~*~~ (1) **BACKGROUND CHECKS FOR CONGREGATE CARE WORKERS.** The treatment of (ss) 48.685 (2) (b) (intro.), (ba), (bb), (bg), and (d), (4m) (b) (intro.), (c), and (d), (5m), and (8) first applies to a congregate care worker, as defined under s. 48.685 (1) (ap), on the following dates:

(a) For a congregate care worker who is hired by or enters a contract with a congregate care facility, as defined under s. 46.685 (1) (ao) on the day after the effective date of this subsection, on the day after the effective date of this paragraph.

(b) For a congregate care worker who is employed at or under contract with a congregate care facility, as defined under s. 48.685 (1) (ao), on the effective date of this paragraph, on the earlier of the following:

1. The first day of the seventh month beginning after the effective date of this subsection.
2. The date on which the congregate care worker's criminal background check under Section 9106 (2) is complete.

Handwritten notes:
- "7th" above "seventh"
- "Subdivision?" and "paragraph?" with arrows pointing to "subsection" and "paragraph" respectively.
- "cs" circled in item 2.
- "a." below "is complete".

Wheeler, Elizabeth

From: Bork, Matthew - DOA
Sent: Thursday, February 14, 2019 3:42 PM
To: Wheeler, Elizabeth
Cc: Kraus, Jennifer - DOA
Subject: FFPSA Background Checks 19-1144_P2

Hi Elizabeth,

Below are comments from DCF regarding the second draft of FFPSA language relating to background checks (19-1144_P2).

Thanks,
Matt

Page 3, Section 4, Line 5: In the definition of “congregate care worker,” please add “Congregate care worker” includes a person who has, or is seeking, a license to operate a congregate care facility and does not include an unpaid volunteer.”

Page 4, Section 6, Line 2: Change “conduct” to “obtain”

Page 4, Section 8, Line 21: Change “conduct” to “obtain”

Page 4, Section 8, Lines 21-22: Move “The department need not obtain a fingerprint-based background check under par. (ba)” to the end of Wis. Stat. 48.685(2)(ba) on page 5, line 3. It seems odd to have this sentence at the end of a 48.685(2)(b) 5m., which is a section that lists all the requirements of the entity.

Page 4, Section 9, Line 25: Change “request” to “obtain”

Page 5, Section 9, Lines 2-3: Remove the entire last sentence—this language seems too restrictive.

Page 5 Note #2: Yes, the entity will collect all other background check materials for employees, but DCF is not performing the fingerprint based check. The entity will tell the employee to go to a Fieldprint office and information will be sent to DOJ. DOJ will send the results to DCF. DCF will simply be reviewing and interpreting the results.

Page 6, Section 11, Lines 4-5: Delete the added reference to (2)(ba) because (2)(ba) only requires fingerprint checks on adults.

Page 8, Section 16, Line 3, change “request” to “obtain”

Page 10, Section 23, Lines 13-14: Delete the added language.

Page 10, Section 9106, Line 20: Delete “January 1, 2020” and simply say “...emergency rules promulgated under this subsection remain in effect until the date on which permanent rules take effect.”



Matthew Bork | Policy and Budget Analyst

Department of Administration

Division of Executive Budget and Finance

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