



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-1144/P2
EAW:ahe

P3

in: 2/17

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

FOR 2019-2021 BUDGET -- NOT READY FOR INTRODUCTION

sa ✓

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

low
Sub-sub:
Background checks for
congregate care workers

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

CHILDREN

The bill defines a congregate
care facility

This bill requires a licensing entity to perform a fingerprint-based background check for all workers at a congregate care facility, defined in 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:

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

3 20.435 (6) (jm) *Licensing and support services*. The amounts in the schedule
4 for the purposes specified in ss. 48.685 (2) (am) and, (b), and (ba), (3) (a) and, (b), and

1 (c), and (5) (a), 48.686 (2) (am), (3) (am) and (bm), and (5) (a), 49.45 (47), 50.02 (2),
2 50.025, 50.065 (2) (am) and (b) 1., (3) (a) and (b), and (5), 50.13, 50.135, 50.36 (2),
3 50.49 (2) (b), 50.495, 50.52 (2) (a), 50.57, 50.981, and 146.40 (4r) (b) and (er), and
4 subch. VI of ch. 50 and to conduct health facilities plan and rule development
5 activities, for accrediting nursing homes, convalescent homes, and homes for the
6 aged, to conduct capital construction and remodeling plan reviews under ss. 50.02
7 (2) (b) and 50.36 (2), and for the costs of inspecting, licensing or certifying, and
8 approving facilities, issuing permits, and providing technical assistance, that are not
9 specified under any other paragraph in this subsection. All moneys received under
10 ss. 48.685 (8), 48.686 (2) (ag), 49.45 (42) (c), 49.45 (47) (c), 50.02 (2), 50.025, 50.065
11 (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,
12 all moneys received from fees for the costs of inspecting, licensing or certifying, and
13 approving facilities, issuing permits, and providing technical assistance, that are not
14 specified under any other paragraph in this subsection, and all moneys received
15 under s. 50.135 (2) shall be credited to this appropriation account.

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

17 20.437 (1) (jm) *Licensing activities.* All moneys received from licensing
18 activities under ss. 48.60, 48.62, 48.625, and 938.22 (7) and from fees under ss.
19 48.615, 48.625, 48.685 (8), and 938.22 (7) (b) and (c), for the costs of licensing child
20 welfare agencies under s. 48.60, foster homes under s. 48.62, group homes under s.
21 48.625, and shelter care facilities under s. 938.22 (7) and for the purposes specified
22 in s. 48.685 (2) (am) ~~and, (b), and (ba)~~, (3) (a) ~~and, (b), and (c)~~, and (5) (a) with respect
23 to those entities.

24 **SECTION 3.** 48.685 (1) (ao) of the statutes is created to read:

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

3 **SECTION 4.** 48.685 (1) (ap) of the statutes is created to read:

4 48.685 (1) (ap) "Congregate care worker" means an adult who works in a
5 congregated care facility. "Congregate care worker" does not include an unpaid
6 volunteer.

includes a person who has
or is seeking a license to operate a congregated
care facility and

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

8 48.685 (1) (c) 2. A violation of s. 940.01, 940.02, 940.03, 940.05, 940.12, 940.19
9 (2), (4), (5), or (6), 940.22 (2) or (3), 940.225 (1), (2), or (3), 940.285 (2), 940.29, 940.295,
10 942.09 (2), 948.02 (1) or (2), 948.025, 948.03 (2) or (5) (a) 1., 2., 3., or 4., 948.05,
11 948.051, 948.055, 948.06, 948.07, 948.08, 948.081, 948.085, 948.11 (2) (a) or (am),
12 948.12, 948.13, 948.21 (2), 948.215, 948.30, or 948.53.

13 **SECTION 6.** 48.685 (2) (am) 5. of the statutes is amended to read:

14 48.685 (2) (am) 5. Information maintained by the department of health services
15 under this section and under ss. 48.623 (6) (am) 2. and (bm) 5., 48.75 (1m), and 48.979
16 (1) (b) regarding any denial to the person of a license, or continuation or renewal of
17 a license to operate an entity, or of payments under s. 48.623 (6) for operating an
18 entity, for a reason specified in sub. (4m) (a) 1. to 5. and regarding any denial to the
19 person of employment at, a contract with, or permission to reside at an entity or of
20 permission to reside with a caregiver specified in sub. (1) (ag) 1. am. for a reason
21 specified in sub. (4m) (b) 1. to 5. If the information obtained under this subdivision
22 indicates that the person has been denied a license, or continuation or renewal of a
23 license, payments, employment, a contract, or permission to reside as described in
24 this subdivision, the department, a county department, or a child welfare agency

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

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

4 48.685 (2) (b) (intro.) Every entity shall obtain all of the following with respect
5 to a caregiver specified in sub. (1) (ag) 1. a. or am. of the entity and, with respect to
6 a nonclient resident of a caregiver specified in sub. (1) (ag) 1. am., and with respect
7 to a congregate care worker, except a caregiver specified in sub. (1) (ag) 1. b., of the
8 entity:

9 SECTION 8. 48.685 (2) (b) 5m. of the statutes is amended to read:

10 48.685 (2) (b) 5m. Information maintained by the department of health services
11 under this section and under ss. 48.623 (6) (am) 2. and (bm) 5., 48.75 (1m), and 48.979
12 (1) (b) regarding any denial to the person of a license, or continuation or renewal of
13 a license to operate an entity, or of payments under s. 48.623 (6) for operating an
14 entity, for a reason specified in sub. (4m) (a) 1. to 5. and regarding any denial to the
15 person of employment at, a contract with, or permission to reside at an entity or of
16 permission to reside with a caregiver specified in sub. (1) (ag) 1. am. for a reason
17 specified in sub. (4m) (b) 1. to 5. If the information obtained under this subdivision
18 indicates that the person has been denied a license, continuation or renewal of a
19 license, a contract, payments, employment, or permission to reside as described in
20 this subdivision, the entity need not obtain the information specified in subds. 1m.
21 to 4m, and the department need not conduct a fingerprint-based background check
22 under par. (ba). obtain

23 SECTION 9. 48.685 (2) (ba) of the statutes is created to read:

24 48.685 (2) (ba) If the person who is the subject of the search under par. (am)
25 or (b) is a congregate care worker, the department shall request a fingerprint-based
obtain

Unless the search has been terminated under par. (b) 5m,

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

2 (A). The department may not use any information obtained under this paragraph

3 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?

4 **SECTION 10.** 48.685 (2) (bb) of the statutes is amended to read:

5 48.685 (2) (bb) If information obtained under par. (am) or (b), or (ba) indicates
6 a charge of a serious crime, but does not completely and clearly indicate the final
7 disposition of the charge, the department, county department, child welfare agency,
8 or entity shall make every reasonable effort to contact the clerk of courts to determine
9 the final disposition of the charge. If a background information form under sub. (6)
10 (a) or (am) indicates a charge or a conviction of a serious crime, but information
11 obtained under par. (am) or (b), or (ba) does not indicate such a charge or conviction,
12 the department, county department, child welfare agency, or entity shall make every
13 reasonable effort to contact the clerk of courts to obtain a copy of the criminal
14 complaint and the final disposition of the complaint. If information obtained under
15 par. (am) or (b), or (ba), a background information form under sub. (6) (a) or (am),
16 or any other information indicates a conviction of a violation of s. 940.19 (1), 940.195,
17 940.20, 941.30, 942.08, 947.01 (1), or 947.013 obtained not more than 5 years before
18 the date on which that information was obtained, the department, county
19 department, child welfare agency, or entity shall make every reasonable effort to
20 contact the clerk of courts to obtain a copy of the criminal complaint and judgment
21 of conviction relating to that violation.

1 **SECTION 11.** 48.685 (2) (bd) of the statutes is amended to read:

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

18 **SECTION 12.** 48.685 (2) (bg) of the statutes is amended to read:

19 48.685 (2) (bg) If an entity employs or contracts with a caregiver or congregate
20 care worker for whom, within the last year, the information required under par. (b)
21 1m. to 3m. and 5m. has already been obtained by another entity, the entity may
22 obtain that information from that other entity, which shall provide the information,
23 if possible, to the requesting entity. If an entity cannot obtain the information
24 required under par. (b) 1m. to 3m. and 5m. from another entity or if an entity has
25 reasonable grounds to believe that any information obtained from another entity is

1 no longer accurate, the entity shall obtain that information from the sources
2 specified in par. (b) 1m. to 3m. and 5m.

3 **SECTION 13.** 48.685 (2) (c) 1. of the statutes is amended to read:

4 48.685 (2) (c) 1. If the person who is the subject of the search under par. (am)
5 is seeking an initial license to operate a foster home or is seeking relicensure after
6 a break in licensure, the department, county department, or child welfare agency
7 shall request under ~~42 USC 16962~~ 34 USC 20962 (b) a fingerprint-based check of the
8 national crime information databases, as defined in 28 USC 534 (f) (3) (A). If that
9 person is seeking subsidized guardianship payments under s. 48.623 (6), the
10 department in a county having a population of 750,000 or more or county department
11 shall request that fingerprint-based check. The department, county department, or
12 child welfare agency may release any information obtained under this subdivision
13 only as permitted under ~~42 USC 16962~~ 34 USC 20962 (e).

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

14 **SECTION 14.** 48.685 (2) (d) of the statutes is amended to read:

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

19 **SECTION 15.** 48.685 (3) (b) of the statutes is amended to read:

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

1 **SECTION 16.** 48.685 (3) (c) of the statutes is created to read:

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

5 **SECTION 17.** 48.685 (4m) (b) (intro.) of the statutes is amended to read:

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

11 **SECTION 18.** 48.685 (4m) (c) of the statutes is amended to read:

12 48.685 (4m) (c) If the background information form completed by a person
13 under sub. (6) (am) indicates that the person is not ineligible to be employed or
14 contracted with for a reason specified in par. (b) 1. to 5., an entity may employ or
15 contract with the person for not more than 45 days pending the receipt of the
16 information sought under sub. (2) (am) or (b) and (ba). If the background information
17 form completed by a person under sub. (6) (am) indicates that the person is not
18 ineligible to be permitted to reside at an entity or with a caregiver specified in sub.
19 (1) (ag) 1. am. for a reason specified in par. (b) 1. to 5. and if an entity otherwise has
20 no reason to believe that the person is ineligible to be permitted to reside at an entity
21 or with that caregiver for any of those reasons, the entity may permit the person to
22 reside at the entity or with the caregiver for not more than 45 days pending receipt
23 of the information sought under sub. (2) (am) or (b) and (ba). An entity shall provide
24 supervision for a person who is employed, contracted with, or permitted to reside as
25 permitted under this paragraph.

1 **SECTION 19.** 48.685 (4m) (d) of the statutes is amended to read:

2 48.685 (4m) (d) If the department learns that a caregiver, congregate care
3 worker, or nonclient resident is the subject of a pending investigation for a crime or
4 offense that, under this subsection or sub. (5), could result in a bar to employment
5 as a caregiver or residencee being a caregiver, working, or residing at an entity, the
6 department may notify the entity of the pending investigation.

7 **SECTION 20.** 48.685 (5m) of the statutes is amended to read:

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

18 **SECTION 21.** 48.685 (6) (am) of the statutes is amended to read:

19 48.685 (6) (am) Every 4 years an entity shall require all of its caregivers and
20 ~~all, nonclient residents of the entity or of a caregiver specified in sub. (1) (ag) 1. am.~~
21 ~~of the entity, congregate care workers, and nonclient residents of a caregiver~~
22 specified in sub. (1) (ag) 1. am. to complete a background information form that is
23 provided to the entity by the department.

24 **SECTION 22.** 48.685 (8) of the statutes is amended to read:

1 48.685 (8) The department, the department of health services, a county
2 department, or a child welfare agency may charge a fee for obtaining the information
3 required under sub. (2) (am) or (3) (a), for providing information to an entity to enable
4 the entity to comply with sub. (2) (b) or (3) (b), or for obtaining and submitting
5 fingerprints under sub. (2) (ba) or (bm) or (3) (c). The fee may not exceed the
6 reasonable cost of obtaining the information or of obtaining and submitting
7 fingerprints. No fee may be charged to a nurse aide, as defined in s. 146.40 (1) (d),
8 for obtaining or maintaining information or for obtaining and submitting
9 fingerprints if to do so would be inconsistent with federal law.

10 **SECTION 23.** 48.981 (7) (a) 4p. of the statutes is amended to read:

11 48.981 (7) (a) 4p. A public or private agency in this state or any other state that
12 is investigating a person for purposes of licensing the person to operate a foster home
13 or placing a child for adoption in the home of the person or for the purpose of working
14 or residing in a congregate care facility, as defined in s. 48.685 (1) (ao).

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

16 (1) **EMERGENCY RULE MAKING FOR BACKGROUND CHECKS FOR CONGREGATE CARE**
17 **WORKERS.** The department of children and families may promulgate emergency rules
18 under s. 227.24 to implement the background check requirements for congregate
19 care workers under s. 48.685. Notwithstanding s. 227.24 (1) (c) and (2), emergency
20 rules promulgated under this subsection remain in effect until January 1, 2020, or
21 the date on which permanent rules take effect, whichever is sooner. 2022
22 Notwithstanding s. 227.24 (1) (a) and (3), the department is not required to provide
23 evidence that promulgating a rule under this subsection as an emergency rule is
24 necessary for the preservation of the public peace, health, safety, or welfare and is

1 not required to provide a finding of emergency for a rule promulgated under this
2 subsection.

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

3 (2) **BACKGROUND CHECKS FOR CONGREGATE CARE WORKERS.** No later than the first
4 day of the 7th month beginning after the effective date of this subsection, the
5 department of children and families, the county department as defined in s. 48.02
6 (2g), the child welfare agency, or the congregate care facility as defined in s. 48.685
7 (1) (ao) shall perform a comprehensive background check as required by s. 48.685 (2)
8 for all congregate care workers, as defined in s. 48.685 (1) (ap), who are working at
9 a congregate care facility on the effective date of this subsection.

10 **SECTION 9306. Initial applicability; Children and Families.**

11 (1) **BACKGROUND CHECKS FOR CONGREGATE CARE WORKERS.** The treatment of s.
12 48.685 (2) (b) (intro.), (ba), (bb), (bg), and (d), (4m) (b) (intro.), (c), and (d), (5m), and
13 (8) first applies to a congregate care worker, as defined in s. 48.685 (1) (ap), on the
14 following dates:

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

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

21 1. The first day of the 7th month beginning after the effective date of this
22 subdivision.

Shea, Elisabeth

From: Wheeler, Elizabeth
Sent: Wednesday, February 20, 2019 9:43 AM
To: Shea, Elisabeth
Subject: FW: FFPSA Background Check Draft 19-1144/P3

FYI.

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

From: Bork, Matthew - DOA <Matthew.Bork@wisconsin.gov>
Sent: Wednesday, February 20, 2019 9:29 AM
To: Wheeler, Elizabeth <Elizbeth.Wheeler@legis.wisconsin.gov>
Cc: Kraus, Jennifer - DOA <Jennifer.Kraus@wisconsin.gov>
Subject: FFPSA Background Check Draft 19-1144/P3

Hi Elizabeth,

DCF has sent me revised responses that they would like you to look at when creating draft 19-1144/P4. Please disregard the email from earlier this morning.

Thanks,
Matt

Family First, s. 50745, amends 42 USC 671(a)(20)(a) to requires states (per (a)(20)(D)) to have a state plan that with procedures for background checks on adult congregate care workers, including fingerprint-based criminal records checks, and child abuse and neglect records checks in Wisconsin and other jurisdictions if the person has lived in other jurisdictions in the past 5 years (unless certain other alternate checks are done). We had previously requested language for the fingerprint and child abuse and neglect checks, but that language was not added.

We already have the provisions for Wisconsin CPS records checks in s. 48.685(2)(am) and (2)(b) as modified in 1144/P3.

Section 8, p. 4 lines 10-13.

1. Amend (2)(ba) to apply the provisions in 48.685(2)(c)2., child abuse and neglect registry checks in Wisconsin and other jurisdictions, to congregate workers. Allow these to be done by DCF or the entity. Also include the confidentiality *CCW* protections for the child abuse and neglect registry checks, so that they limit the use of the child abuse and neglect checks to for the purposes of background checks for congregate workers as provided under 42 USC 67(a)(20). **(Required)**.

Example: 48.685(2)(c)2. If the person who is the subject of the search under par. (am) is seeking a license to operate a foster home or is an adult nonclient resident of the foster home and if the person or adult nonclient resident is not, or at any time within the 5 years preceding the date of the search has not been, a resident of this state, the department, county department, or child welfare agency shall check any child abuse

or neglect registry maintained by any state or other U.S. jurisdiction in which the person or adult nonclient resident is a resident or was a resident within those 5 years for information that is equivalent to the information specified in par. (am) 4. If that person is seeking subsidized guardianship payments under s. 48.623 (6) or is an adult nonclient resident of the home of that person and if the person or adult nonclient resident is not, or at any time within the 5 years preceding the date of the search has not been, a resident of this state, the department in a county having a population of 750,000 or more or county department shall conduct that child abuse or neglect registry check. The department, county department, or child welfare agency may not use any information obtained under this subdivision for any purpose other than a search of the person's background under par. (am).

- ✓ 2. Add language referencing protections under 34 USC 20962(e) for fingerprint background checks. These provisions apply to fingerprint based checks for congregate care workers because 20962(e) refers to checks under 42 USC 61(a)(20), which include the congregate care fingerprint checks which are under 42 USC 61(a)(20)(D). **(Required)**.

34 USC 20962(e) Protection of information

An individual having information derived as a result of a check under subsection (b) may release that information only to appropriate officers of child welfare agencies, public or private elementary or secondary schools, or educational agencies or other persons authorized by law to receive that information.

3. Amend ^{48.685(2)(ba)} to read: "unless the search has been terminated under par. (am)5. or par. (b)5m." to avoid a conflict between (2)(am)5. and (b)(2a).

For better consistency with (b)5m., you may also want to delete the language in Section 6, p. 4, lines 1-2 in s. 48.685(2)(am)5. : ", and the department need not obtain a fingerprint-based background check under par. (ba). (Not required).

4. Please amend s. 48.685(2)(ba) to more simply read:

For a congregate worker or person who seeks to be a congregate care worker, the department and an entity shall obtain a fingerprint-based check of the national crime information databases, as defined in 28 USC 534(f)(3)(A), ...unless the search has been terminated under par. (b)5m. **Not required.** *disagree*

Otherwise, 48.685(2)(ba) is very difficult to read and interpret. (2)(ba) as drafted in effect reads something like: If the person who is the subject of the search under (am) [i.e., a caregiver specified in sub. (1)(a)(ag)1.b., i.e., a person who has or is seeking a license to operate an entity or a person who is receiving or is seeking an SG payment] or (b) (i.e., a person who is expected to be, an employee or contractor of an entity, who is or is expected to be under the control of the entity, as defined by the department by rule*, and who is expected to have regular direct contract with clients of the entity, or is non-client resident of an entity) or is a congregate care worker (except for a person who is a person seeking a license to operate an entity or an SG payment)] is a congregate care worker, the department must obtain a fingerprint check.

5. **Section 23**, p. 10, lines 11-14, re-insert a provision from 1144/P2 (Section 23, p. 10, lines 11-14), with a slight modification. That provision allowed release of CPS information to a public or private entity in this state or another state for CPS background checks on congregate care workers. (We had it removed from /P3). **(Required)**

48.981(7)(a)4p.

A public or private agency in this state or any other state that is investigating a person for purposes of licensing the person to operate a foster home or placing a child for adoption in the home of the person; or,

A public or private agency in this state or any other state for the purpose of a background check of an adult working in a congregate care setting as provided in 42 USC 671(a)(20)(D). *investigative*

congregate care worker

Note that we can already make a disclosure of CPS info 48.981(7)(a)17., which we interpret to also allow release of info to a private child welfare agency that has a contract to perform a public child welfare agency's duties:

17. A federal agency, state agency of this state or any other state or local governmental unit located in this state or any other state that has a need for a report or record in order to carry out its responsibility to protect children from abuse or neglect or to protect unborn children from abuse.

From: Bork, Matthew - DOA
Sent: Wednesday, February 20, 2019 8:56 AM
To: Wheeler, Elizabeth A - LEGIS <Elizabeth.Wheeler@legis.wisconsin.gov>
Cc: Kraus, Jennifer - DOA <Jennifer.Kraus@wisconsin.gov>
Subject: FFPSA Background Check Draft 19-1144/P3

Hi Elizabeth,

DCF has come back with responses to the newest draft, they are included below. Please call if you have questions, I am hoping these will be the last changes needed.

Thanks,
Matt

Family First, s. 50745, amends 42 USC 671(a)(20)(a) to requires states (per (a)(20)(D)) to have a state plan that with procedures for background checks on adult congregate care workers, including fingerprint-based criminal records checks, and child abuse and neglect records checks in Wisconsin and other jurisdictions if the person has lived in other jurisdictions in the past 5 years (unless certain other alternate checks are done). We had previously requested language for the fingerprint and child abuse and neglect checks, but that language was not added.

We already have the provisions for Wisconsin CPS records checks in s. 48.685(2)(am) and (2)(b) as modified in 1144/P3.

Section 8, p. 4 lines 10-13.

1. Amend (2)(ba) to apply the provisions in 48.685(2)(c)2., child abuse and neglect registry checks in Wisconsin and other jurisdictions, to congregate workers. Should these be done by DCF or the entity? Also include the confidentiality protections for the child abuse and neglect registry checks, so that they limit the use of the child abuse and neglect checks to for the purposes of background checks for congregate workers as provided under 42 USC 67(a)(20). **(Required).**

48.685(2)(c)2. If the person who is the subject of the search under par. (am) is seeking a license to operate a foster home or is an adult nonclient resident of the foster home and if the person or adult nonclient resident is not, or at any time within the 5 years preceding the date of the search has not been, a resident of this state, the department, county department, or child welfare agency shall check any child abuse or neglect registry maintained by any state or other U.S. jurisdiction in which the person or adult nonclient resident is a resident or was a resident within those 5 years for information that is equivalent to the information specified in par. (am) 4. If that person is seeking subsidized guardianship payments under s. 48.623 (6) or is an adult nonclient resident of the home of that person and if the person or adult nonclient resident is not, or at any time within the 5 years preceding the date of the search has not been, a resident of this state, the department in a county having a population of 750,000 or more or county department shall conduct that child abuse or neglect registry check. The department, county department, or child

welfare agency may not use any information obtained under this subdivision for any purpose other than a search of the person's background under par. (am).

2. Add language referencing protections under 34 USC 20962(e) for fingerprint background checks. These provisions apply to fingerprint based checks for congregate care workers because 20962(e) refers to checks under 42 USC 61(a)(20), which include the congregate care fingerprint checks which are under 42 USC 61(a)(20)(D). **(Required)**.

34 USC 20962(e) Protection of information

An individual having information derived as a result of a check under subsection (b) may release that information only to appropriate officers of child welfare agencies, public or private elementary or secondary schools, or educational agencies or other persons authorized by law to receive that information.

3. Amend to read: "unless the search has been terminated under par. (am)5. or par. (b)5m." to avoid a conflict between (2)(am)5. and (b)(2a). **(May not be required since it will probably be interpreted that way anyway?)**.

For better consistency with (b)5m., you may also want to delete the language in Section 6, p. 4, lines 1-2 in s. 48.685(2)(am)5. : ", and the department need not obtain a fingerprint-based background check under par. (ba). **(Not required)**.

4. Should we amend s. 48.685(2)(ba) to more simply read:

For a congregate worker or person who seeks to be a congregate care worker, the department and an entity shall obtain a fingerprint-based check of the national crime information databases, as defined in 28 USC 534(f)(3)(A), ...unless the search has been terminated under par. (b)5m. Should we do a similar amendment for the background checks in other jurisdictions? **Not required**.

Otherwise, 48.685(2)(ba) is very difficult to read and interpret. (2)(ba) as drafted in effect reads something like: If the person who is the subject of the search under (am) [i.e., a caregiver specified in sub. (1)(a)(ag)1.b., i.e., a person who has or is seeking a license to operate an entity or a person who is receiving or is seeking an SG payment] or (b) (i.e., a person who is expected to be, an employee or contractor of an entity, who is or is expected to be under the control of the entity, as defined by the department by rule*, and who is expected to have regular direct contract with clients of the entity, or is non-client resident of an entity) or is a congregate care worker (except for a person who is a person seeking a license to operate an entity or an SG payment)] is a congregate care worker, the department must obtain a fingerprint check.

5. If a fingerprint check information could be returned before the other background check information, should we amend Section 6, p. 3-4, i.e., s. 48.685(2)(b)5m. to say "...If the information obtained under this (2)(ba) indicates the person the person has been denied a license etc. the department, a county department, or a child welfare agency need not obtain the information specified in subds. 1. to 4.? Should we similarly amend s. 48.685(2)(am)5. That way if the fingerprint checks or other jurisdiction CPS checks come back sooner we don't need to do the other checks. **Not required**.

6. **Section 16**, p. 7, lines 5 and 12. Delete "and (ba)" (?) (provisional employment provisions). This would be a safe approach to the FF requirements. (However, it's not clear to me that FF requires the checks before the congregate care begins working since it only says we must have procedures for checks of congregate care workers, and doesn't reference that they must be done before the person is employed, while the requirements for background checks on foster and adoptive parents require the checks be done before they are approved). Is it practical to wait on these in an employment procedure? Also, we could rely on the fact that we say we don't have a registry which under the federal law therefore exempts us from checks from other jurisdictions. **(Required)?**

This will require us to interpret 48.685(2)(b) to require the results be obtained before congregate care workers begin working, even though it doesn't expressly say that.

7. **Section 23**, p. 10, lines 11-14, re-insert a provision from 1144/P2 (Section 23, p. 10, lines 11-14), with a slight modification. That provision allowed release of CPS information to a public or private entity in this state or another state for CPS background checks on congregate care workers. (We had it removed from /P3). **(Required)?**

Do we think we must or should respond to out of state congregate care registry checks from private agencies as well as public agencies? The federal provisions says we must have procedures for any child care institution, including a group home, residential treatment center, shelter, or other congregate care setting to conduct criminal records checks and child abuse and neglect checks. However, the federal provisions also say we must have procedures to conduct the checks as required for foster and adoptive homes, and the provisions for the foster and adoptive home background checks refer to the States conducting the checks. To be on the safe side, should we reinsert the provision with a slight modification?

48.981(7)(a)4p.

A public or private agency in this state or any other state that is investigating a person for purposes of licensing the person to operate a foster home or placing a child for adoption in the home of the person; or,

A public or private agency in this state or any other state for the purpose of a background check of an adult working in a congregate care setting as provided in 42 USC 671(a)(20)(D).

Note that we can already make a disclosure of CPS info 48.981(7)(a)17., which we interpret to also allow release of info to a private child welfare agency that has a contract to perform a public child welfare agency's duties:

17. A federal agency, state agency of this state or any other state or local governmental unit located in this state or any other state that has a need for a report or record in order to carry out its responsibility to protect children from abuse or neglect or to protect unborn children from abuse.



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

FOR 2019-2021 BUDGET -- NOT READY FOR INTRODUCTION

In 2/20

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RF-

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

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

CHILDREN

1. Background checks for congregate care workers

This bill requires a licensing entity to perform a fingerprint-based background check for all workers at a congregate care facility, as required under federal law. The bill defines a congregate care facility to be a group home, shelter care facility, or residential care center for children and youth. 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:

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

3 20.435 (6) (jm) *Licensing and support services.* The amounts in the schedule
4 for the purposes specified in ss. 48.685 (2) (am) and, (b), and (ba), (3) (a) and, (b), and

1 (c), and (5) (a), 48.686 (2) (am), (3) (am) and (bm), and (5) (a), 49.45 (47), 50.02 (2),
2 50.025, 50.065 (2) (am) and (b) 1., (3) (a) and (b), and (5), 50.13, 50.135, 50.36 (2),
3 50.49 (2) (b), 50.495, 50.52 (2) (a), 50.57, 50.981, and 146.40 (4r) (b) and (er), and
4 subch. VI of ch. 50 and to conduct health facilities plan and rule development
5 activities, for accrediting nursing homes, convalescent homes, and homes for the
6 aged, to conduct capital construction and remodeling plan reviews under ss. 50.02
7 (2) (b) and 50.36 (2), and for the costs of inspecting, licensing or certifying, and
8 approving facilities, issuing permits, and providing technical assistance, that are not
9 specified under any other paragraph in this subsection. All moneys received under
10 ss. 48.685 (8), 48.686 (2) (ag), 49.45 (42) (c), 49.45 (47) (c), 50.02 (2), 50.025, 50.065
11 (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,
12 all moneys received from fees for the costs of inspecting, licensing or certifying, and
13 approving facilities, issuing permits, and providing technical assistance, that are not
14 specified under any other paragraph in this subsection, and all moneys received
15 under s. 50.135 (2) shall be credited to this appropriation account.

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

17 20.437 (1) (jm) *Licensing activities.* All moneys received from licensing
18 activities under ss. 48.60, 48.62, 48.625, and 938.22 (7) and from fees under ss.
19 48.615, 48.625, 48.685 (8), and 938.22 (7) (b) and (c), for the costs of licensing child
20 welfare agencies under s. 48.60, foster homes under s. 48.62, group homes under s.
21 48.625, and shelter care facilities under s. 938.22 (7) and for the purposes specified
22 in s. 48.685 (2) (am) and, (b), and (ba), (3) (a) and, (b), and (c), and (5) (a) with respect
23 to those entities.

24 **SECTION 3.** 48.685 (1) (ao) of the statutes is created to read:

1 48.685 (1) (ao) “Congregate care facility” means a group home, shelter care
2 facility, or residential care center for children and youth.

3 **SECTION 4.** 48.685 (1) (ap) of the statutes is created to read:

4 48.685 (1) (ap) “Congregate care worker” means an adult who works in a
5 congregated care facility. “Congregate care worker” includes a person who has or is
6 seeking a license to operate a congregated care facility and does not include an unpaid
7 volunteer.

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

9 48.685 (1) (c) 2. A violation of s. 940.01, 940.02, 940.03, 940.05, 940.12, 940.19
10 (2), (4), (5), or (6), 940.22 (2) or (3), 940.225 (1), (2), or (3), 940.285 (2), 940.29, 940.295,
11 942.09 (2), 948.02 (1) or (2), 948.025, 948.03 (2) or (5) (a) 1., 2., 3., or 4., 948.05,
12 948.051, 948.055, 948.06, 948.07, 948.08, 948.081, 948.085, 948.11 (2) (a) or (am),
13 948.12, 948.13, 948.21 (2), 948.215, 948.30, or 948.53.

14 **SECTION 6.** 48.685 (2) (am) 5. of the statutes is amended to read:

15 48.685 (2) (am) 5. Information maintained by the department of health services
16 under this section and under ss. 48.623 (6) (am) 2. and (bm) 5., 48.75 (1m), and 48.979
17 (1) (b) regarding any denial to the person of a license, or continuation or renewal of
18 a license to operate an entity, or of payments under s. 48.623 (6) for operating an
19 entity, for a reason specified in sub. (4m) (a) 1. to 5. and regarding any denial to the
20 person of employment at, a contract with, or permission to reside at an entity or of
21 permission to reside with a caregiver specified in sub. (1) (ag) 1. am. for a reason
22 specified in sub. (4m) (b) 1. to 5. If the information obtained under this subdivision
23 indicates that the person has been denied a license, or continuation or renewal of a
24 license, payments, employment, a contract, or permission to reside as described in
25 this subdivision, the department, a county department, or a child welfare agency

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

3 **SECTION 7.** 48.685 (2) (b) (intro.) of the statutes is amended to read:

4 48.685 (2) (b) (intro.) Every entity shall obtain all of the following with respect
5 to a caregiver specified in sub. (1) (ag) 1. a. or am. of the entity and, with respect to
6 a nonclient resident of a caregiver specified in sub. (1) (ag) 1. am., and with respect
7 to a congregate care worker, except a caregiver specified in sub. (1) (ag) 1. b., of the
8 entity:

9 **SECTION 8.** 48.685 (2) (ba) of the statutes is created to read:

10 48.685 (2) (ba) If the person who is the subject of the search under par. (am)
11 or (b) is a congregate care worker, the department shall obtain a fingerprint-based
12 check of the national crime information databases, as defined in 28 USC 534 (f) (3)
13 (A), unless the search has been terminated under par. ^{(am) 5. or} (b) 5m.

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

15 48.685 (2) (bb) If information obtained under par. (am) ~~or~~, (b), or (ba) indicates
16 a charge of a serious crime, but does not completely and clearly indicate the final
17 disposition of the charge, the department, county department, child welfare agency,
18 or entity shall make every reasonable effort to contact the clerk of courts to determine
19 the final disposition of the charge. If a background information form under sub. (6)
20 (a) or (am) indicates a charge or a conviction of a serious crime, but information
21 obtained under par. (am) ~~or~~, (b), or (ba) does not indicate such a charge or conviction,
22 the department, county department, child welfare agency, or entity shall make every
23 reasonable effort to contact the clerk of courts to obtain a copy of the criminal
24 complaint and the final disposition of the complaint. If information obtained under
25 par. (am) ~~or~~, (b), or (ba), a background information form under sub. (6) (a) or (am),

1 or any other information indicates a conviction of a violation of s. 940.19 (1), 940.195,
2 940.20, 941.30, 942.08, 947.01 (1), or 947.013 obtained not more than 5 years before
3 the date on which that information was obtained, the department, county
4 department, child welfare agency, or entity shall make every reasonable effort to
5 contact the clerk of courts to obtain a copy of the criminal complaint and judgment
6 of conviction relating to that violation.

7 SECTION 10. 48.685 (2) (bg) of the statutes is amended to read:

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

17 SECTION 11. 48.685 (2) (c) 1. of the statutes is amended to read:

18 48.685 (2) (c) 1. If the person who is the subject of the search under par. (am)
19 is seeking an initial license to operate a foster home or is seeking relicensure after
20 a break in licensure, the department, county department, or child welfare agency
21 shall request under ~~42 USC 16962~~ 34 USC 20962 (b) a fingerprint-based check of the
22 national crime information databases, as defined in 28 USC 534 (f) (3) (A). If that
23 person is seeking subsidized guardianship payments under s. 48.623 (6), the
24 department in a county having a population of 750,000 or more or county department
25 shall request that fingerprint-based check. The department, county department, or

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1 child welfare agency may release any information obtained under this subdivision
2 only as permitted under 42 USC 16962 34 USC 20962 (e).

3 **SECTION 12.** 48.685 (2) (d) of the statutes is amended to read:

4 48.685 (2) (d) Every entity shall maintain, or shall contract with another
5 person to maintain, the most recent background information obtained on a caregiver
6 or congregate care worker under par. (b). The information shall be made available
7 for inspection by authorized persons, as defined by the department by rule.

8 **SECTION 13.** 48.685 (3) (b) of the statutes is amended to read:

9 48.685 (3) (b) Every 4 years or at any time within that period that an entity
10 considers appropriate, the entity shall request the information specified in sub. (2)
11 (b) 1m. to 5m. for all persons who are caregivers ~~specified in sub. (1) (ag) 1. a. or am.~~
12 ~~of the entity and for all nonclient residents of a caregiver specified in sub. (1) (ag) 1.~~
13 ~~am. of the entity~~ subject to sub. (2) (b).

14 **SECTION 14.** 48.685 (3) (c) of the statutes is created to read:

15 48.685 (3) (c) Every 4 years or at any time within that period that the
16 department considers appropriate, the department shall obtain the information
17 specified in sub. (2) (ba) for all persons who are congregate care workers.

18 **SECTION 15.** 48.685 (4m) (b) (intro.) of the statutes is amended to read:

19 48.685 (4m) (b) (intro.) Notwithstanding s. 111.335, and except as provided in
20 sub. (5), an entity may not employ or contract with a caregiver specified in sub. (1)
21 (ag) 1. a. or am. or a congregate care worker or permit a nonclient resident to reside
22 at the entity or with a caregiver specified in sub. (1) (ag) 1. am. of the entity if the
23 entity knows or should have known any of the following:

24 **SECTION 16.** 48.685 (4m) (c) of the statutes is amended to read:

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

15 **SECTION 17.** 48.685 (4m) (d) of the statutes is amended to read:

16 48.685 (4m) (d) If the department learns that a caregiver, congregate care
17 worker, or nonclient resident is the subject of a pending investigation for a crime or
18 offense that, under this subsection or sub. (5), could result in a bar to employment
19 as a caregiver or residence being a caregiver, working, or residing at an entity, the
20 department may notify the entity of the pending investigation.

21 **SECTION 18.** 48.685 (5m) of the statutes is amended to read:

22 48.685 (5m) Notwithstanding s. 111.335, the department may refuse to license
23 a person to operate an entity, a county department or a child welfare agency may
24 refuse to license a foster home under s. 48.62, the department in a county having a
25 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 19.** 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 20.** 48.685 (8) of the statutes is amended to read:

14 48.685 (8) The department, the department of health services, a county
15 department, or a child welfare agency may charge a fee for obtaining the information
16 required under sub. (2) (am) or (3) (a), for providing information to an entity to enable
17 the entity to comply with sub. (2) (b) or (3) (b), or for obtaining and submitting
18 fingerprints under sub. (2) (ba) or (bm) or (3) (c). The fee may not exceed the
19 reasonable cost of obtaining the information or of obtaining and submitting
20 fingerprints. No fee may be charged to a nurse aide, as defined in s. 146.40 (1) (d),
21 for obtaining or maintaining information or for obtaining and submitting
22 fingerprints if to do so would be inconsistent with federal law.

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

24 (1) EMERGENCY RULE MAKING FOR BACKGROUND CHECKS FOR CONGREGATE CARE
WORKERS. The department of children and families may promulgate emergency rules

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1 under s. 227.24 to implement the background check requirements for congregate
2 care workers under s. 48.685. Notwithstanding s. 227.24 (1) (c) and (2), emergency
3 rules promulgated under this subsection remain in effect until January 1, 2022, or
4 the date on which permanent rules take effect, whichever is sooner.
5 Notwithstanding s. 227.24 (1) (a) and (3), the department is not required to provide
6 evidence that promulgating a rule under this subsection as an emergency rule is
7 necessary for the preservation of the public peace, health, safety, or welfare and is
8 not required to provide a finding of emergency for a rule promulgated under this
9 subsection.

10 (2) BACKGROUND CHECKS FOR CONGREGATE CARE WORKERS. No later than the first
11 day of the 7th month beginning after the effective date of this subsection, the
12 department of children and families, the county department as defined in s. 48.02
13 (2g), the child welfare agency, or the congregate care facility as defined in s. 48.685
14 (1)(ao) shall perform a comprehensive background check as required by s. 48.685 (2)
15 for all congregate care workers, as defined in s. 48.685 (1) (ap), who are working at
16 a congregate care facility on the effective date of this subsection.

17 **SECTION 9306. Initial applicability; Children and Families.**

18 (1) BACKGROUND CHECKS FOR CONGREGATE CARE WORKERS. The treatment of s.
19 48.685 (2) (b) (intro.), (ba), (bb), (bg), and (d), (4m) (b) (intro.), (c), and (d), (5m), and
20 (8) first applies to a congregate care worker, as defined in s. 48.685 (1) (ap), on the
21 following dates:

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

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2019-2020 DRAFTING INSERT
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LEGISLATIVE REFERENCE BUREAU

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SECTION 1. 48.685 (2) (bm) of the statutes is amended to read:

48.685 (2) (bm) If the person who is the subject of the search under par. (am) or (b) is not a resident of this state, or if at any time within the 5 years preceding the date of the search that person has not been a resident of this state, or if the department, county department, child welfare agency, or entity determines that the person's employment, licensing, or state court records provide a reasonable basis for further investigation, the department, county department, child welfare agency, or entity shall make a good faith effort to obtain from any state or other United States jurisdiction in which the person is a resident or was a resident within the 5 years preceding the date of the search information that is equivalent to the information specified in par. (am) 1. or (b) 1m. The department, county department, child welfare agency, or entity may require the person to be fingerprinted on 2 fingerprint cards, each bearing a complete set of the person's fingerprints, or by other technologies approved by law enforcement agencies. The department of justice may provide for the submission of the fingerprint cards or fingerprints by other technologies to the federal bureau of investigation for the purposes of verifying the identity of the person fingerprinted and obtaining records of his or her criminal arrests and convictions. The department, county department, or child welfare agency may release any information obtained under this subdivision only as permitted under 32 USC 20962

(e).

paragraph

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.

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1 **INSERT 8-23**

2 **SECTION 2.** 48.981 (7) (a) 4p. of the statutes is amended to read:

3 48.981 (7) (a) 4p. A public or private agency in this state or any other state that
4 is investigating a person for purposes of licensing the person to operate a foster home
5 or placing a child for adoption in the home of the person or for the purposes of
6 conducting a background investigation under s. 48.685 of an adult congregate care
7 worker, as defined ⁱⁿ under s. 48.685 (1) (ap).

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.



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-1144/P4
EAW:ah&amn

DOA:.....Bork, BB0155 - Background checks for congregate care workers
FOR 2019-2021 BUDGET -- NOT READY FOR INTRODUCTION

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

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

CHILDREN

1. Background checks for congregate care workers

This bill requires a licensing entity to perform a fingerprint-based background check for all workers at a congregate care facility, as required under federal law. The bill defines a congregate care facility to be a group home, shelter care facility, or residential care center for children and youth. 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:

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

3 20.435 (6) (jm) *Licensing and support services.* The amounts in the schedule
4 for the purposes specified in ss. 48.685 (2) (am) and, (b), and (ba), (3) (a) and, (b), and

SECTION 1

1 (c), and (5) (a), 48.686 (2) (am), (3) (am) and (bm), and (5) (a), 49.45 (47), 50.02 (2),
2 50.025, 50.065 (2) (am) and (b) 1., (3) (a) and (b), and (5), 50.13, 50.135, 50.36 (2),
3 50.49 (2) (b), 50.495, 50.52 (2) (a), 50.57, 50.981, and 146.40 (4r) (b) and (er), and
4 subch. VI of ch. 50 and to conduct health facilities plan and rule development
5 activities, for accrediting nursing homes, convalescent homes, and homes for the
6 aged, to conduct capital construction and remodeling plan reviews under ss. 50.02
7 (2) (b) and 50.36 (2), and for the costs of inspecting, licensing or certifying, and
8 approving facilities, issuing permits, and providing technical assistance, that are not
9 specified under any other paragraph in this subsection. All moneys received under
10 ss. 48.685 (8), 48.686 (2) (ag), 49.45 (42) (c), 49.45 (47) (c), 50.02 (2), 50.025, 50.065
11 (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,
12 all moneys received from fees for the costs of inspecting, licensing or certifying, and
13 approving facilities, issuing permits, and providing technical assistance, that are not
14 specified under any other paragraph in this subsection, and all moneys received
15 under s. 50.135 (2) shall be credited to this appropriation account.

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

17 20.437 (1) (jm) *Licensing activities.* All moneys received from licensing
18 activities under ss. 48.60, 48.62, 48.625, and 938.22 (7) and from fees under ss.
19 48.615, 48.625, 48.685 (8), and 938.22 (7) (b) and (c), for the costs of licensing child
20 welfare agencies under s. 48.60, foster homes under s. 48.62, group homes under s.
21 48.625, and shelter care facilities under s. 938.22 (7) and for the purposes specified
22 in s. 48.685 (2) (am) ~~and, (b), and (ba), (3) (a) and, (b), and (c),~~ and (5) (a) with respect
23 to those entities.

24 **SECTION 3.** 48.685 (1) (ao) of the statutes is created to read:

1 48.685 (1) (ao) “Congregate care facility” means a group home, shelter care
2 facility, or residential care center for children and youth.

3 **SECTION 4.** 48.685 (1) (ap) of the statutes is created to read:

4 48.685 (1) (ap) “Congregate care worker” means an adult who works in a
5 congregated care facility. “Congregate care worker” includes a person who has or is
6 seeking a license to operate a congregated care facility and does not include an unpaid
7 volunteer.

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

9 48.685 (1) (c) 2. A violation of s. 940.01, 940.02, 940.03, 940.05, 940.12, 940.19
10 (2), (4), (5), or (6), 940.22 (2) or (3), 940.225 (1), (2), or (3), 940.285 (2), 940.29, 940.295,
11 942.09 (2), 948.02 (1) or (2), 948.025, 948.03 (2) or (5) (a) 1., 2., 3., or 4., 948.05,
12 948.051, 948.055, 948.06, 948.07, 948.08, 948.081, 948.085, 948.11 (2) (a) or (am),
13 948.12, 948.13, 948.21 (2), 948.215, 948.30, or 948.53.

14 **SECTION 6.** 48.685 (2) (am) 5. of the statutes is amended to read:

15 48.685 (2) (am) 5. Information maintained by the department of health services
16 under this section and under ss. 48.623 (6) (am) 2. and (bm) 5., 48.75 (1m), and 48.979
17 (1) (b) regarding any denial to the person of a license, or continuation or renewal of
18 a license to operate an entity, or of payments under s. 48.623 (6) for operating an
19 entity, for a reason specified in sub. (4m) (a) 1. to 5. and regarding any denial to the
20 person of employment at, a contract with, or permission to reside at an entity or of
21 permission to reside with a caregiver specified in sub. (1) (ag) 1. am. for a reason
22 specified in sub. (4m) (b) 1. to 5. If the information obtained under this subdivision
23 indicates that the person has been denied a license, or continuation or renewal of a
24 license, payments, employment, a contract, or permission to reside as described in
25 this subdivision, the department, a county department, or a child welfare agency

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

3 **SECTION 7.** 48.685 (2) (b) (intro.) of the statutes is amended to read:

4 48.685 (2) (b) (intro.) Every entity shall obtain all of the following with respect
5 to a caregiver specified in sub. (1) (ag) 1. a. or am. of the entity and, with respect to
6 a nonclient resident of a caregiver specified in sub. (1) (ag) 1. am., and with respect
7 to a congregate care worker, except a caregiver specified in sub. (1) (ag) 1. b., of the
8 entity:

9 **SECTION 8.** 48.685 (2) (ba) of the statutes is created to read:

10 48.685 (2) (ba) If the person who is the subject of the search under par. (am)
11 or (b) is a congregate care worker, the department shall obtain a fingerprint-based
12 check of the national crime information databases, as defined in 28 USC 534 (f) (3)
13 (A), unless the search has been terminated under par. (am) 5. or (b) 5m.

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

15 48.685 (2) (bb) If information obtained under par. (am) ~~or~~, (b), or (ba) indicates
16 a charge of a serious crime, but does not completely and clearly indicate the final
17 disposition of the charge, the department, county department, child welfare agency,
18 or entity shall make every reasonable effort to contact the clerk of courts to determine
19 the final disposition of the charge. If a background information form under sub. (6)
20 (a) or (am) indicates a charge or a conviction of a serious crime, but information
21 obtained under par. (am) ~~or~~, (b), or (ba) does not indicate such a charge or conviction,
22 the department, county department, child welfare agency, or entity shall make every
23 reasonable effort to contact the clerk of courts to obtain a copy of the criminal
24 complaint and the final disposition of the complaint. If information obtained under
25 par. (am) ~~or~~, (b), or (ba), a background information form under sub. (6) (a) or (am),

1 or any other information indicates a conviction of a violation of s. 940.19 (1), 940.195,
2 940.20, 941.30, 942.08, 947.01 (1), or 947.013 obtained not more than 5 years before
3 the date on which that information was obtained, the department, county
4 department, child welfare agency, or entity shall make every reasonable effort to
5 contact the clerk of courts to obtain a copy of the criminal complaint and judgment
6 of conviction relating to that violation.

7 **SECTION 10.** 48.685 (2) (bg) of the statutes is amended to read:

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

17 **SECTION 11.** 48.685 (2) (bm) of the statutes is amended to read:

18 48.685 (2) (bm) If the person who is the subject of the search under par. (am)
19 or (b) is not a resident of this state, or if at any time within the 5 years preceding the
20 date of the search that person has not been a resident of this state, or if the
21 department, county department, child welfare agency, or entity determines that the
22 person's employment, licensing, or state court records provide a reasonable basis for
23 further investigation, the department, county department, child welfare agency, or
24 entity shall make a good faith effort to obtain from any state or other United States
25 jurisdiction in which the person is a resident or was a resident within the 5 years

1 preceding the date of the search information that is equivalent to the information
2 specified in par. (am) 1. or (b) 1m. The department, county department, child welfare
3 agency, or entity may require the person to be fingerprinted on 2 fingerprint cards,
4 each bearing a complete set of the person's fingerprints, or by other technologies
5 approved by law enforcement agencies. The department of justice may provide for
6 the submission of the fingerprint cards or fingerprints by other technologies to the
7 federal bureau of investigation for the purposes of verifying the identity of the person
8 fingerprinted and obtaining records of his or her criminal arrests and convictions.
9 The department, county department, or child welfare agency may release any
10 information obtained under this paragraph only as permitted under 32 USC 20962
11 (e).

12 **SECTION 12.** 48.685 (2) (c) 1. of the statutes is amended to read:

13 48.685 (2) (c) 1. If the person who is the subject of the search under par. (am)
14 is seeking an initial license to operate a foster home or is seeking relicensure after
15 a break in licensure, the department, county department, or child welfare agency
16 shall request under ~~42 USC 16962~~ 34 USC 20962 (b) a fingerprint-based check of the
17 national crime information databases, as defined in 28 USC 534 (f) (3) (A). If that
18 person is seeking subsidized guardianship payments under s. 48.623 (6), the
19 department in a county having a population of 750,000 or more or county department
20 shall request that fingerprint-based check. The department, county department, or
21 child welfare agency may release any information obtained under this subdivision
22 only as permitted under ~~42 USC 16962~~ 34 USC 20962 (e).

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

24 48.685 (2) (d) Every entity shall maintain, or shall contract with another
25 person to maintain, the most recent background information obtained on a caregiver

1 or congregate care worker under par. (b). The information shall be made available
2 for inspection by authorized persons, as defined by the department by rule.

3 **SECTION 14.** 48.685 (3) (b) of the statutes is amended to read:

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

9 **SECTION 15.** 48.685 (3) (c) of the statutes is created to read:

10 48.685 (3) (c) Every 4 years or at any time within that period that the
11 department considers appropriate, the department shall obtain the information
12 specified in sub. (2) (ba) for all persons who are congregate care workers.

13 **SECTION 16.** 48.685 (4m) (b) (intro.) of the statutes is amended to read:

14 48.685 (4m) (b) (intro.) Notwithstanding s. 111.335, and except as provided in
15 sub. (5), an entity may not employ or contract with a caregiver specified in sub. (1)
16 (ag) 1. a. or am. or a congregate care worker or permit a nonclient resident to reside
17 at the entity or with a caregiver specified in sub. (1) (ag) 1. am. of the entity if the
18 entity knows or should have known any of the following:

19 **SECTION 17.** 48.685 (4m) (c) of the statutes is amended to read:

20 48.685 (4m) (c) If the background information form completed by a person
21 under sub. (6) (am) indicates that the person is not ineligible to be employed or
22 contracted with for a reason specified in par. (b) 1. to 5., an entity may employ or
23 contract with the person for not more than 45 days pending the receipt of the
24 information sought under sub. (2) (am) or (b) and (ba). If the background information
25 form completed by a person under sub. (6) (am) indicates that the person is not

1 ineligible to be permitted to reside at an entity or with a caregiver specified in sub.
2 (1) (ag) 1. am. for a reason specified in par. (b) 1. to 5. and if an entity otherwise has
3 no reason to believe that the person is ineligible to be permitted to reside at an entity
4 or with that caregiver for any of those reasons, the entity may permit the person to
5 reside at the entity or with the caregiver for not more than 45 days pending receipt
6 of the information sought under sub. (2) (am) or (b) and (ba). An entity shall provide
7 supervision for a person who is employed, contracted with, or permitted to reside as
8 permitted under this paragraph.

9 **SECTION 18.** 48.685 (4m) (d) of the statutes is amended to read:

10 48.685 (4m) (d) If the department learns that a caregiver, congregate care
11 worker, or nonclient resident is the subject of a pending investigation for a crime or
12 offense that, under this subsection or sub. (5), could result in a bar to employment
13 ~~as a caregiver or residence~~ being a caregiver, working, or residing at an entity, the
14 department may notify the entity of the pending investigation.

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

16 48.685 (5m) Notwithstanding s. 111.335, the department may refuse to license
17 a person to operate an entity, a county department or a child welfare agency may
18 refuse to license a foster home under s. 48.62, the department in a county having a
19 population of 750,000 or more or a county department may refuse to provide
20 subsidized guardianship payments to a person under s. 48.623 (6), and an entity may
21 refuse to employ or contract with a caregiver or congregate care worker or permit a
22 nonclient resident to reside at the entity or with a caregiver specified in sub. (1) (ag)
23 1. am. of the entity if the person has been convicted of an offense that is not a serious
24 crime, but that is, in the estimation of the department, county department, child
25 welfare agency, or entity, substantially related to the care of a client.

1 **SECTION 20.** 48.685 (6) (am) of the statutes is amended to read:

2 48.685 **(6)** (am) Every 4 years an entity shall require all of its caregivers and
3 all, nonclient residents of the entity or of a caregiver specified in sub. (1) (ag) 1. am.
4 of the entity, congregate care workers, and nonclient residents of a caregiver
5 specified in sub. (1) (ag) 1. am. to complete a background information form that is
6 provided to the entity by the department.

7 **SECTION 21.** 48.685 (8) of the statutes is amended to read:

8 48.685 **(8)** The department, the department of health services, a county
9 department, or a child welfare agency may charge a fee for obtaining the information
10 required under sub. (2) (am) or (3) (a), for providing information to an entity to enable
11 the entity to comply with sub. (2) (b) or (3) (b), or for obtaining and submitting
12 fingerprints under sub. (2) (ba) or (bm) or (3) (c). The fee may not exceed the
13 reasonable cost of obtaining the information or of obtaining and submitting
14 fingerprints. No fee may be charged to a nurse aide, as defined in s. 146.40 (1) (d),
15 for obtaining or maintaining information or for obtaining and submitting
16 fingerprints if to do so would be inconsistent with federal law.

17 **SECTION 22.** 48.981 (7) (a) 4p. of the statutes is amended to read:

18 48.981 **(7)** (a) 4p. A public or private agency in this state or any other state that
19 is investigating a person for purposes of licensing the person to operate a foster home
20 or placing a child for adoption in the home of the person or for the purposes of
21 conducting a background investigation under s. 48.685 of an adult congregate care
22 worker, as defined in s. 48.685 (1) (ap).

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

24 (1) **EMERGENCY RULE MAKING FOR BACKGROUND CHECKS FOR CONGREGATE CARE**
25 **WORKERS.** The department of children and families may promulgate emergency rules

1 under s. 227.24 to implement the background check requirements for congregate
2 care workers under s. 48.685. Notwithstanding s. 227.24 (1) (c) and (2), emergency
3 rules promulgated under this subsection remain in effect until January 1, 2022, or
4 the date on which permanent rules take effect, whichever is sooner.
5 Notwithstanding s. 227.24 (1) (a) and (3), the department is not required to provide
6 evidence that promulgating a rule under this subsection as an emergency rule is
7 necessary for the preservation of the public peace, health, safety, or welfare and is
8 not required to provide a finding of emergency for a rule promulgated under this
9 subsection.

10 (2) BACKGROUND CHECKS FOR CONGREGATE CARE WORKERS. No later than the first
11 day of the 7th month beginning after the effective date of this subsection, the
12 department of children and families, the county department as defined in s. 48.02
13 (2g), the child welfare agency, or the congregate care facility as defined in s. 48.685
14 (1) (ao) shall perform a comprehensive background check as required by s. 48.685 (2)
15 for all congregate care workers, as defined in s. 48.685 (1) (ap), who are working at
16 a congregate care facility on the effective date of this subsection.

17 **SECTION 9306. Initial applicability; Children and Families.**

18 (1) BACKGROUND CHECKS FOR CONGREGATE CARE WORKERS. The treatment of s.
19 48.685 (2) (b) (intro.), (ba), (bb), (bg), and (d), (4m) (b) (intro.), (c), and (d), (5m), and
20 (8) first applies to a congregate care worker, as defined in s. 48.685 (1) (ap), on the
21 following dates:

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

