



Clearinghouse Rule 20-003

State of Wisconsin Department of Children and Families

Technical Changes to Update DCF Rules

DCF 13, 35, 52, 54, 56, 57, 250, and 251

The Wisconsin Department of Children and Families proposes to repeal ch. DCF 35 and ss. DCF 52.65 (1) (Note) and (2) (a) (Note), 54.08 (1) (Note) and (2) (a) (Note), 57.61 (1) (Note) and (2) (a) (Note); to renumber and amend ss. DCF 250.03 (14) and 251.03 (14); to amend ss. DCF 13.01; 13.02 (4) (b), (7) (d), (15), (17) (b), and (19); 13.03 (2) (a) and (b); 13.05 (1) (title), (intro.), and (c) 5. and (2); 13.06 (1) (a); 13.07 (1) (intro.), (a) 2., 3., 5., 7., 8., 9., and 10., and (3); 13.08 (1) (a) 3., 5., and 8.; 13.09 (2) (b) and (c); 13.10 (3); 13.11 (1) (intro.) and (2); 13.13 (4) (intro.) and (5) (c) 1. b. and 3. b.; 13.15 (2) (c); 13.16 (1) (a) 1. a. (Note); 52.59 (5) (a); 52.65 (1) and (2) (a); 54.08 (1) and (2) (a); 56.16 (1) (L) (intro.); 57.61 (1) and (2) (a); 250.04 (2) (g); 250.04 (6) (a) 4. d.; 250.05 (2) (d) 1.; 250.06 (11) (b) 2.; 251.04 (6) (a) 8. d.; 251.05 (2) (a) 3. a.; 251.095 (2) (d) and (e) and (3) (a); and 251.12 (3); to repeal and recreate ss. DCF 13.02 (4) (a) and 56.15 (1) (a) 4. (intro.); and to create ss. DCF 13.02 (3) (c) and (15m), 13.08 (1) (a) 3m., 13.10 (4), and 56.15 (1) (a) 4. d., relating to technical changes to update DCF rules.

Analysis Prepared by the Department of Children and Families

Statutory authority: Sections 48.686 (9), 48.67 (intro.), 49.343 (4), and 227.11 (2) (a), Stats.

Statutes interpreted: Sections 48.62 (3), 48.64 (1r), 48.686, 48.983, 49.34, 49.343, Stats.

Related statutes and rules:

Explanation of Agency Authority

Section 48.686 (9), Stats., provides that the department may promulgate any rules necessary for the administration of child care background checks.

Section 48.67 (intro.), Stats., provides that the department shall promulgate rules establishing minimum requirements for the issuance of licenses to, and establishing standards for the operation of, child welfare agencies, child care centers, foster homes, group homes, shelter care facilities, and county departments. Those rules shall be designed to protect and promote the health, safety, and welfare of the children in the care of all licensees.

The department administers grants to a county, city, private agency, or Indian tribe for home visitation program services under s. 48.983, Stats.

Section 49.343 (4), Stats., provides that the department shall promulgate rules that include standards for determining whether a proposed rate is appropriate to the level of services to be provided, the qualifications of a provider to provide those services, and the reasonable and necessary costs of providing those services.

Section 227.11 (2) (a), Stats., expressly confers rule-making authority on each agency to promulgate rules interpreting the provisions of any statute enforced or administered by the agency.

Summary of the Proposed Rule

The proposed rules make technical corrections to various department rules, including the following:

DCF 13, Background Checks in Child Care Programs

The proposed rules update the department's child care background check rule ch. DCF 13 to incorporate changes to s. 48.686, Stats., as affected by 2019 Wisconsin Act 9. These changes add "noncaregiver employees" to the list of persons subject to the background check; replace the term "nonclient resident" with "household member"; and change the time period for a person to file an appeal of an ineligibility determination from 60 days to 10 days.

DCF 35, Home Visitation to Prevent Child Abuse and Neglect

The proposed rules repeal ch. DCF 35, which provides a formula for the distribution of home visiting grants based on statutory language that has been repealed. Section 48.983, Stat., as affected by 2015 Wisconsin Act 172, no longer directs the department to promulgate a rule with a formula that determines the need for a home visiting grant based on the number of births funded by Medical Assistance and the rate of poor birth outcomes in a locality.

DCF 52, Residential Care Centers for Children and Youth

The proposed rules amend s. DCF 52.59 (5) (a) to replace the term "physically handicapped" with "physically disabled" as directed by Executive Order 15.

DCF 52, 54, and 57, Residential Care Centers, Child-Placing Agencies, and Group Homes

The proposed rules amend the department's rules on residential care centers, child-placing agencies, and group homes to update cross-references to federal regulations and state statute on allowable costs for rate regulation.

DCF 56, Foster Homes

The proposed rules amend the department's foster home rule to incorporate changes to ss. 48.62 (3) and 48.64 (1r), Stats., as affected by 2017 Wisconsin Act 251, relating to notice to a school district of a foster home license or placement.

DCF 250 and 251, Family Child Care Centers and Group Child Care Centers

The proposed rules update the department's family and group child care center rules to correct cross-references to provisions repealed or renumbered in CR 19-070 and a remaining

cross-reference to s. 48.685, Stats., which has not applied to child care programs since s. 48.686, Stats., became effective.

The proposed rules also correct a typo and update the term “HealthCheck provider” to “EPSDT provider” based on the terminology in s. DHS 105.37.

Summary of Data and Analytical Methodologies

The proposed rules correct cross-references, update terminology, and incorporate minor statutory changes.

Summary of Related Federal Law

The federal regulations affecting allowable costs and rate regulation of residential care centers, group homes, and child-placing agencies are the following:

- 2 CFR Part 200, Uniform administrative requirements, cost principles, and audit requirements for federal awards
- 45 CFR Part 75, Uniform administrative requirements, cost principles, and audit requirements for HHS awards
- 48 CFR Part 31, Contract cost principles and procedures.

Under 45 CFR 98.43, the department is required to conduct a background check of noncaregiver employees of a child care program.

The Every Student Succeeds Act of 2015 emphasizes the need for collaboration between schools, school districts, and child welfare agencies to improve outcomes for children in out-of-home care.

Comparison to Adjacent States

Not applicable

Effect on Small Businesses

The proposed rules affect small businesses, including child care providers.

Analysis Used to Determine Effect on Small Businesses

The proposed rules do not include any substantive changes, but will enhance the clarity of the rules.

Place Where Comments are to be Submitted and Deadline for Submission

Comments may be submitted to Elaine Pridgen, Department of Children and Families, 201 E. Washington Avenue, P.O. Box 8916, Madison, WI, 53708-8916 or dcfpublichearing@wisconsin.gov. The comment deadline is February 13, 2020.

SECTION 1. DCF 13.01, as created by CR 19-089, is amended to read:

DCF 13.01 Purpose and scope. This chapter is promulgated under the authority of ss. 48.67 (intro.), 48.686, and 227.11 (2) (a), Stats., to specify procedures necessary to implement background checks required under s. 48.686, Stats., for caregivers, noncaregiver employees, and ~~nonclient residents~~ household members at a child care program.

SECTION 2. DCF 13.02 (3) (c) is created to read:

DCF 13.02 (3) (c) A barrier to a person's eligibility for employment or contract as a noncaregiver employee.

SECTION 3. DCF 13.02 (4) (a), as created by CR 19-089, is repealed and recreated to read:

DCF 13.02 (4) (a) An employee or contractor of a child care program who is involved in the care or supervision of clients.

SECTION 4. DCF 13.02 (4) (b), (7) (d), and (15), as created by CR 19-089, are amended to read:

DCF 13.02 (4) (b) A person who ~~is involved in the care or supervision of~~ has direct contact with clients of a child care program or has unsupervised access to clients of a child care program, including student teachers, household members age 10 and older, and volunteers counted for the purpose of meeting the required staff-to-child ratios.

(7) (d) A temporary employment agency that provides caregivers or noncaregiver employees to another child care program.

(15) ~~“Nonclient resident”~~ “Household member” means a person who is age 10 or older, who resides, or is expected to reside, at a child care program, and who is not a client of the child care program or caregiver.

SECTION 5. DCF 13.02 (15m) is created to read:

DCF 13.02 (15m) “Noncaregiver employee” means a person who provides services to a child care program as an employee or a contractor and is not a caregiver, but whose work at the child care program provides the ability to move freely throughout the premises and opportunities for interactions with clients of the child care program.

SECTION 6. DCF 13.02 (17) (b) and (19), as created by CR 19-089, are amended to read:

DCF 13.02 (17) (b) Employment or contract with a child care program to be a caregiver or noncaregiver employee.

(19) “Role” means a person’s job as a caregiver or noncaregiver employee or a person’s status as a ~~nonclient resident~~ household member at a child care program.

SECTION 7. DCF 13.03 (2) (a) and (b), as created by CR 19-089, is amended to read:

DCF 13.03 (2) FINGERPRINT SEARCHES. (a) Prior to working as a caregiver or noncaregiver employee or residing in a child care program, the subject of the background check shall submit fingerprints in a manner directed by the department.

(b) Every 5 years or as otherwise requested by the department, caregivers, noncaregiver employees, and ~~nonclient residents~~ household members shall resubmit fingerprints in a manner directed by the department and the information specified under sub. (1).

SECTION 8. DCF 13.05 (1) (title), (intro.), and (c) 5. and (2), as created by CR 19-089, are amended to read:

DCF 13.05 (1) (title) and (intro.) CAREGIVERS, NONCAREGIVER EMPLOYEES, AND ~~NONCLIENT RESIDENTS~~ HOUSEHOLD MEMBERS. To determine whether a ~~caregiver~~ caregiver's, noncaregiver employee's, or ~~nonclient resident's~~ household member's conviction or delinquency adjudication for an offense that is not a serious crime is substantially related to the care of a child or the activities of a child care program, the department shall consider all of the following:

(c) 5. If the person is a caregiver or noncaregiver employee, the person's ability to perform or to continue to perform the role consistent with the safe and efficient operation of the program and the confidence of clients and the parents or guardians of clients.

(2) DOCUMENTATION. The department shall document how it reached the determination under sub. (1) that the criminal conviction or delinquency adjudication of a caregiver, noncaregiver employee, or ~~nonclient resident~~ household member is or is not substantially related to the care of a child or the activities of the child care program.

SECTION 9. DCF 13.06 (1) (a), as created by CR 19-089, is amended to read:

DCF 13.06 (1) PRELIMINARY ELIGIBILITY. (a) The department shall issue a preliminary eligibility determination that indicates whether a person is barred from employment as a caregiver, noncaregiver employee, or ~~nonclient residency~~ household member at the child care program based on any serious crimes reported on the federal bureau of investigation and Wisconsin department of justice fingerprint results.

SECTION 10. DCF 13.07 (1) (intro.), (2) (a) 2., 3., 5., 7., 8., 9., and 10., and (3), as created by CR 19-089, are amended to read:

DCF 13.07 (1) CHILD CARE PROGRAM OFFENSE REPORTING REQUIREMENTS. A child care program shall report to the agency that granted regulatory approval as soon as the child care program knows, or should have known, that any of the following apply to a caregiver, noncaregiver employee, or ~~nonclient-resident~~ household member at the child care program:

(2) (a) 2. A ~~nonclient-resident~~ household member turns 10 years of age.

3. A ~~nonclient-resident~~ household member turns 18 years of age.

5. A caregiver, noncaregiver employee, or a ~~nonclient-resident~~ household member at the child care program changes his or her name.

7. A new caregiver or noncaregiver employee begins work, or a prospective caregiver or noncaregiver employee intends to begin work, at the child care program.

8. A caregiver or noncaregiver employee is no longer working in the child care program or intends to no longer work in the child care program, including the last date of employment.

9. A prospective caregiver or noncaregiver employee was not hired.

10. A former ~~nonclient-resident~~ household member is no longer residing at the child care program or a ~~nonclient-resident~~ household member intends to no longer reside at the child care program, including the last date of residence.

(3) CHILD CARE PROGRAM POLICY. A child care program shall include in its personnel or operating policies a provision that requires a person who is a caregiver specified in s. DCF 13.02

(4) (a) and (b) or a noncaregiver employee to notify the child care program as soon as possible, but no later than the child care program's next working day, if any of the circumstances under sub. (1) (a) to (h) apply to the person.

SECTION 11. DCF 13.08 (1) (a) 3., as created by CR 19-089, is amended to read:

DCF 13.08 (1) (a) 3. Hires, employs, or contracts with a person that the department determined was ineligible to be a caregiver or noncaregiver employee, ~~or permits a person to be a nonclient resident,~~ in the child care program ~~that the department determined was ineligible.~~

SECTION 12. DCF 13.08 (1) (a) 3m. is created to read:

DCF 13.08 (1) (a) 3m. Permits a person that the department determined was ineligible to be a household member in the child care program.

SECTION 13. DCF 13.08 (1) (a) 5. and 8., as created by CR 19-089, are amended to read:

DCF 13.08 (1) (a) 5. Knows, or should know, that a caregiver, noncaregiver employee, or ~~nonclient resident~~ household member at the child care program committed an act barred under s. 48.686 (4m) (a) 6., 7., or 8., Stats., including knowingly giving false information on or knowingly omitting material information relating to the child care background check.

8. Violates any provision in s. 48.686, Stats., or this chapter regarding caregivers, noncaregiver employees, ~~and nonclient residents~~ or household members.

SECTION 14. DCF 13.09 (2) (b) and (c), as created by CR 19-089, are amended to read:

DCF 13.09 (2) (b) An appeal under sub. (1) may be submitted no later than ~~60~~ 10 days after the date of the department's ineligibility determination, unless the subject requests, and the department grants for good cause shown, an extension for a specific period of time prior to the expiration of the ~~60-day~~ 10-day appeal period.

(c) If an appeal is not received under sub. (1) within ~~60~~ 10 days after the department's ineligibility determination and an extension has not been approved before the expiration of the

~~60-day~~ 10-day appeal period, the department's ineligibility determination made under s. DCF 13.06 (3) is final.

SECTION 15. DCF 13.10 (3), as created by CR 19-089, is amended to read:

DCF 13.10 (3) A person who is, or is expected to be, a ~~nonclient-resident~~ household member at a child care program that is regulated by the agency.

SECTION 16. DCF 13.10 (4) is created to read:

DCF 13.10 (4) A person who is, or is expected to be, a noncaregiver employee for a child care program that is regulated by the agency.

SECTION 17. DCF 13.11 (1) (intro.) and (2), as created by CR 19-089, are amended to read:

DCF 13.11 (1) (intro.) ~~A~~ Except as provided under sub. (2), a person may have the opportunity to demonstrate his or her rehabilitation if any of the following apply:

(2) ~~Within~~ A person may not have the opportunity to demonstrate his or her rehabilitation if within the preceding 12 months an agency denied the person's request for rehabilitation approval, and the new request is for the same type of regulatory approval, job function, or ~~nonclient-resident~~ status as a household member with the same level of direct contact with clients or unsupervised access to clients.

SECTION 18. DCF 13.13 (4) (intro.) and (5) (c) 1. b. and 3. b., as created by CR 19-089, are amended to read:

DCF 13.13 (4) (intro.) REHABILITATION REVIEW PANEL. After reviewing the information obtained, a review panel appointed under sub. (2) shall decide whether the person who is the

subject of the rehabilitation review has demonstrated by clear and convincing evidence that he or she is rehabilitated for purposes of receiving regulatory approval, employment as a caregiver or noncaregiver employee, contracting with a child care program to be a caregiver or noncaregiver employee, or residing at a child care program. The panel shall consider at least the following factors, as applicable:

(5) (c) 1. b. The types of approval that were requested and are approved in the decision, such as regulatory approval, employment as a caregiver or noncaregiver employee, contract to be a caregiver or noncaregiver employee, or ~~nonclient-residency~~ status as a household member at a child care program.

3. b. The types of approval that were requested and are denied in the decision, such as regulatory approval, employment as a caregiver or noncaregiver employee, contract to be a caregiver or noncaregiver employee, or ~~nonclient-residency~~ status as a household member at a child care program.

SECTION 19. DCF 13.15 (2) (c), as created by CR 19-089, is amended to read:

DCF 13.15 (2) (c) If an agency withdraws rehabilitation approval and the withdrawal results in a bar to regulatory approval, employment as a caregiver or noncaregiver employee, contracting with a child care program to be a caregiver or noncaregiver employee, or ~~residing~~ status as a household member at a child care program, the agency that withdraws the rehabilitation approval shall immediately report the withdrawal to the department.

SECTION 20. DCF 13.16 (1) (a) 1. a. (Note), as created by CR 19-089, is amended to read:

DCF 13.16 (1) (a) 1. a. Note: For example, a certification agency in County B may accept a rehabilitation approval to be a ~~nonclient-resident~~ household member in a certified child care home if a certification agency in County A granted the same type of approval.

SECTION 21. Chapter DCF 35 is repealed.

SECTION 22. DCF 52.59 (5) (a) is amended to read:

DCF 52.59 (5) (a) A policy regarding the type of respite care children who can be served, such as those who are emotionally disturbed, physically ~~handicapped~~ disabled, medically needy, or developmentally disabled, including the specific types of developmental disabilities served.

SECTION 23. DCF 52.65 (1) is amended to read:

DCF 52.65 (1) Applicable federal regulations, including 2 CFR Part ~~225~~ 200, ~~2-CFR Part 230~~, 45 CFR Part ~~74~~ 75, ~~45-CFR Part 92~~, and 48 CFR Part 31, except as provided in sub. (2).

SECTION 24. DCF 52.65 (1) (Note) is repealed.

SECTION 25. DCF 52.65 (2) (a) is amended to read:

DCF 52.65 (2) (a) For nonprofit corporations, reserves allowed under s. 49.34 (5m) (b) ~~2~~ 1, Stats.

SECTION 26. DCF 52.65 (2) (a) (Note) is repealed.

SECTION 27. DCF 54.08 (1) is amended to read:

DCF 54.08 (1) Applicable federal regulations, including 2 CFR Part ~~225~~ 200, ~~2-CFR Part 230~~, 45 CFR Part ~~74~~ 75, ~~45-CFR Part 92~~, and 48 CFR Part 31, except as provided in sub. (2).

SECTION 28. DCF 54.08 (1) (Note) is repealed.

SECTION 29. DCF 54.08 (2) (a) is amended to read:

DCF 54.08 (2) (a) For nonprofit corporations, reserves allowed under s. 49.34 (5m) (b) ~~2~~ 1, Stats.

SECTION 30. DCF 54.08 (2) (a) (Note) is repealed.

SECTION 31. DCF 56.15 (1) (a) 4. (intro.) is repealed and recreated to read:

DCF 56.15 (1) (a) 4. (intro.) When a school-age child is placed in a foster home, notify the school district in which the foster home is located and the school in which the child will enroll, unless the child will remain enrolled in his or her school district and school of origin. If the child will remain enrolled in his or her school and school district of origin, the supervising agency shall give notification of the placement to the child's school district and school of origin., as required under s. 48.64 (1r), Stats. The notification shall include all of the following:

SECTION 32. DCF 56.15 (1) (a) 4. d. is created to read:

DCF 56.15 (1) (a) 4. d. The name and contact information for the caseworker or social worker assigned to the child's case.

SECTION 33. DCF 56.16 (1) (L) (intro.) is amended to read:

DCF 56.16 (1) (L) (intro.) Notify the ~~clerk of the~~ school district in which a foster home is located when a license to operate a foster home is issued in that school district, pursuant to s. 48.62 (3), Stats. The notification shall include all of the following:

SECTION 34. DCF 57.61 (1) is amended to read:

DCF 57.61 (1) Applicable federal regulations, including 2 CFR Part ~~225~~ 200, ~~2 CFR Part 230~~, 45 CFR Part ~~74~~ 75, ~~45 CFR Part 92~~, and 48 CFR Part 31, except as provided in sub. (2).

SECTION 35. DCF 57.61 (1) (Note) is repealed.

SECTION 36. DCF 57.61 (2) (a) is amended to read:

DCF 57.61 (2) (a) For nonprofit corporations, reserves allowed under s. 49.34 (5m) (b) ~~2~~ 1, Stats.

SECTION 37. DCF 57.61 (2) (a) (Note) is repealed.

SECTION 38. DCF 250.03 (14) is renumbered DCF 250.03 (8m) and amended to read:

DCF 250.03 (8m) “~~HealthCheck~~ EPSDT provider” means a provider of health assessment and evaluation services that is eligible to be certified under s. DHS 105.37 (1) (a).

SECTION 39. DCF 250.04 (2) (g) is amended to read:

DCF 250.04 (2) (g) Provide written information to parents on whether a licensee has insurance coverage on the premises and on the child care business. Liability insurance on the child care business is required if cats or dogs are allowed in areas accessible to children during the hours of operation ~~as specified in s. DCF 250.07 (7) (h)~~.

SECTION 40. DCF 250.04 (6) (a) 4. d., as affected by CR 19-089, is amended to read:

DCF 250.04 (6) (a) 4. d. A health examination report shall be made on an electronic printout from a licensed physician, physician assistant, or other ~~HealthCheck~~ EPSDT provider or a form provided by the department that is signed and dated by a licensed physician, physician assistant, or other ~~HealthCheck~~ EPSDT provider.

SECTION 41. DCF 250.05 (2) (d) 1., as affected by CR 19-089, is amended to read:

DCF 250.05 (2) (d) 1. Except as provided under subd. 2., a physical examination report completed within 12 months before or 30 days after the person became licensed or began working with children in care. The physical examination report may be a printout of an electronic record from a medical professional or on a form provided by the department. The report shall be dated and signed by a licensed physician, physician's assistant, or other ~~HealthCheck~~ EPSDT provider and shall indicate all of the following:

SECTION 42. DCF 250.06 (11) (b) 2. is amended to read:

DCF 250.06 (11) (b) 2. There shall be at least 75 square feet of outdoor ~~place~~ play space for each child using the space at a given time. A center with a licensed capacity of 8 children is required to have a minimum of 600 square feet.

SECTION 43. DCF 251.03 (14) is renumbered DCF 251.03 (10s) and amended to read:

DCF 251.03 (10s) "~~HealthCheck~~ EPSDT provider" means a provider of health assessment and evaluation services that is eligible to be certified under s. DHS 105.37 (1) (a).

SECTION 44. DCF 251.04 (6) (a) 8. d., as affected by CR 19-089, is amended to read:

DCF 251.04 (6) (a) 8. d. A health examination report shall be made on an electronic printout from a licensed physician, physician assistant, or other ~~HealthCheck~~ EPSDT provider or on a form provided by the department that is signed and dated by a licensed physician, physician assistant, or other ~~HealthCheck~~ EPSDT provider.

SECTION 45. DCF 251.05 (2) (a) 3. a., as affected by CR 19-089, is amended to read:

DCF 251.05 (2) (a) 3. a. A physical examination report on a form provided by the department that was completed not more than 12 months prior to nor more than 30 days after the person was hired. The report shall be signed and dated by a licensed physician, physician's assistant, or other ~~HealthCheck~~ EPSDT provider. The report shall indicate that the person is free from illnesses detrimental to children, including tuberculosis, and that the person is physically able to work with young children.

SECTION 46. DCF 251.095 (2) (d) and (e) and (3) (a) are amended to read:

DCF 251.095 (2) (d) Section DCF 251.05 ~~(4) (3) (g) 2.~~, relating to training for assistant child care teachers.

(e) Section DCF ~~251.05 (3) (b)~~ 251.055 (1) (c), relating to supervision of children, does not apply to children 8 years of age and older in the child care center.

(3) (a) Section DCF 251.05 ~~(4) (3) (g) 2.~~, relating to training for assistant child care teachers.

SECTION 47. DCF 251.12 (3) is amended to read:

DCF 251.12 (3) ENFORCEMENT ACTION. The department may order any sanction or impose any penalty on a licensee in accordance with s. ~~48.685~~ 48.686, 48.715, or 48.76, Stats.

SECTION 48. EFFECTIVE DATE. These rules shall take effect the first day of the month following publication in the Administrative Register, as provided in s. 227.22 (2) (intro.), Stats.,