

## Clearinghouse Rule 21-107

### State of Wisconsin Department of Children and Families

#### Technical Corrections and Minor Updates to Child Welfare Rules

#### DCF 12, 13, 39, 40, 50, 52, 55, 56, 58, and 59

The Wisconsin Department of Children and Families proposes **to repeal** s. DCF 39.03 (3); **to renumber and amend** s. DCF 12.02 (5); **to amend** ss. DCF 12.01 (1) and (Note); 12.02 (2), (3) (a), (4) (b), (8) (c), (14) (k) and (Note), (15) (b), (21) (d), (22) (b), and (26) (b) 1., 2., and 6.; 12.03 (2); 12.04 (title) and (2) (c); 12.05 (1); 12.06 (1) (intro.), (a) 1. to 4. and (Note); 12.08 (1) (intro.), (a), and (b), (2) (a) 4. and 5. and (b) 1., and (3) (intro.), (a), and (b); 12.09 (1) (a) 1. and 2.; 12.10 (1) (b); 12.11 (intro.); 12.13 (4) (intro.) and (5) (c) 1. b. and 3. b.; 12.14 (1) (b), (2), and (3); 12.15 (4) and (5); 12.16 (3); 13.02 (14) (b); 39.03 (14) (b), 39.08 (6); 40.02 (3); 40.04 (3) (b) 3. c. and 4. and (c) 2.; 50.02 (11) (b); 52.01; 52.03 (1); 52.12 (6) (a) 4.; 52.21 (6), (7) (a), (b), and (c) and (8) (b); 52.22 (2) (b) 1. and 5.; 52.23 (2) (c); 52.42 (7) (d) 4.; 52.48 (1) (b); 52.58 (2) (b); 52.59 (5) (d) 2. and (7) (b) 2.; 52.61 (7) (a) 2. (intro.); 52.62 (2) (c) 3.; 55.01 (Note); 55.02 (2), (5m) (b), and (10) (Note); 55.03 (1) (a) 1. (intro.) and b. and 3.; 55.04 (1) and (2); 55.05 (1) (a) and (c); 55.07 (Note); 55.11 (3) (a) 1.; 55.12 (2); 55.13 (2) (d) and (4) (intro.); 56.03 (11s) (b), (15), (27r), and (30); 56.04 (4) (a) 2. and (Note) and 4. and (b) 2. and 5m.; 56.05 (1) (a) 2., (b) 1. e., (c) 2. e., and (g) 3. and 4., (3) (a), (5) (b) and (c) (Note); 56.055 (2) (d), (3) (a) and (b), and (4) (intro.); 56.08 (6) (c) 1.; 56.09 (1) (i) and (m) (Note), (2m) (a) and (b) (intro.), (5) (d), (6) (b), (7), (9) (b) and (c) and (12) (intro.); 56.13 (4) (b), (5) (a) 1. a. and 2. b. and c., (6) (a) 1. a., (c) 2. b., (f) 6. a. and d. and 9. and (8) (b); 56.14 (7) (d) and (8) (a); 56.21 (3) (b); 58.02 (4) (b) 3. a., (8), (14) (b), and (25); 58.03 (2) and (3); 58.04 (1) (b) (Note); 58.05 (5); 58.06 (2) (e), and (6) (b); 58.07 (1) (a) and (2); 58.08 (4) (a) 3. a. and (b) 2., (5) (b) 1., 2. and (Note), (9) (b) 1., (11) (a) 1. d., (13) and (14) (Note), 58.10 (1) (a) 13., 15., and 16. and (2) (b) 2.; 58.12 (1) (a); 59.02 (6g) and (6m); 59.04 (1) (d) 2.; **to repeal and recreate** ss. DCF 39.09 (5), DCF 52.41 (1) (c) 8.; 55.13 (4) (a); 56.02 (2) (b) 4.; 56.055 (4) (a); and 59.04 (6) (a) 4., (b) 7., (c) 2. and (Note); and **to create** ss. DCF 12.02 (8g) and (8r) and 58.02 (23g), (23r), and (24m), relating to technical corrections and minor updates to child welfare rules.

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#### Analysis Prepared by the Department of Children and Families

**Statutory authority:** Sections 48.195 (6), 48.57 (3m) (i) and (3n) (i), 48.67 (intro.), 48.685 (9), 48.686 (8), 48.975 (5), and 227.11 (2) (a), Stats.

**Statutes interpreted:** Sections 48.195, 48.60, 48.62, 48.623, 48.67, 48.685, 48.686, 48.975, and 48.981, Stats.

**Related statutes and rules:** NA

#### Explanation of Agency Authority

Section 48.195 (6), Stats., provides that the department shall promulgate rules to implement s. 48.195, Stats., on taking a newborn child into custody.

Section 48.57 (3m) (i), Stats., provides that the department shall promulgate rules to implement kinship care under s. 48.57 (3m), Stats., including rules to provide assessment criteria for determining whether a relative caregiver who is providing care and maintenance for a child is eligible to receive payments and rules governing the provision of payments for the care and maintenance of a child after the child attains 18 years of age.

Section 48.57 (3n) (i), Stats., provides that the department shall promulgate rules to implement long-term kinship care under s. 48.57 (3n), Stats., including rules governing the provision of payments for the care and maintenance of a child after the child attains 18 years of age.

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.

Section 48.685 (9), Stats., provides that the department may promulgate any rules necessary for the administration of the child welfare background check requirements in s. 48.685, Stats.

Section 48.686 (8), Stats., provides that the department may promulgate any rules necessary for the administration of the child care background check requirements in s. 48.686, Stats.

Section 48.975 (5), Stats., provides that the department shall promulgate rules necessary to implement adoption assistance under s. 48.975, Stats.

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 if the agency considers it necessary to effectuate the purpose of the statute.

### **Summary of the Rule**

The proposed rules will make minor substantive changes, statutory updates, clarifications, and technical corrections to the department's child welfare rules, including the following:

#### **DCF 58, Kinship Care and Long-Term Kinship Care**

The current ch. DCF 58 provides that a relative caregiver of a child is eligible for long-term kinship care only if the relative caregiver is the child's guardian under s. 48.977, Stats. The proposed rules extend eligibility for long-term kinship care to a relative caregiver who is the guardian of a child under a tribal court order that is substantially similar to an order under s. 48.977, Stats. "Tribal court order" is defined as an order of a tribal court located in Wisconsin.

Section 48.57 (3n) (am) 1., Stats., limited eligibility for long-term kinship care to a relative caregiver who was appointed the child's guardian under s. 48.977, Stats., until the cross-reference to s. 48.977, Stats., was removed in 2009 Wisconsin Act 71.

The proposed rules also do the following:

- Add "or a substantially similar tribal law of a tribe located in Wisconsin" to the definitions of "voluntary placement agreement" and "voluntary transition-to-independent-living agreement."

- Create a definition for “tribal private guardianship order” to mean a guardianship order of a tribal court that is granted under a tribal law that is substantially similar to s. 48.9795, Stats., and add “or a tribal private guardianship order” to each cross-reference to s. 48.9795, Stats.
- Correct terminology from “or a substantially similar Wisconsin tribal law” to “or a substantially similar tribal court order” throughout the rule. “Tribal court order” is defined as an order of a tribal court located in Wisconsin.

#### DCF 12, Background Checks for Child Welfare Programs

The proposed rules update DCF 12 to conform with changes to s. 48.685, Stats., as affected by 2019 Wisconsin Act 9, that require agencies and entities to conduct a background check on any adult working in a residential care center for children and youth, group home, or shelter care facility. The proposed rules define any of these facilities as a “congregate care facility” and a “congregate care worker” as any adult working in a congregate care facility. The term “congregate care worker” is added to various provisions throughout the rule, and the term “caregiver background check” is changed to “background check.”

Prior to 2019 Wisconsin Act 9, an employee or contractor was subject to the background check requirements only if the employee or contractor met the definition of caregiver in s. 48.685 (1) (ag), Stats.

#### DCF 13, Background Check for Child Care Programs

A citation in the definition of “final substantiated finding” of child abuse or neglect is corrected.

#### DCF 39, Relinquishing Custody of a Newborn Child

DCF 39 includes a definition of “hospital staff member” that specifies various types of hospital staff members including “a hospital social worker, as described in s. DHS 124.25.” This provision is replaced with “a hospital social worker, case worker, or social work assistant.” In addition, a reference to the Bureau of Milwaukee Child Welfare is replaced with “the department in a county with a population of 750,000 or more.”

#### DCF 40, Review of a Determination of Child Abuse or Neglect

The population of Milwaukee County is updated from 500,000 to 750,000 in the definition of “agency.”

#### DCF 50, Facilitating Public Adoptions and Adoption Assistance

A citation in the definition of “final substantiated finding” of child abuse or neglect is corrected.

#### DCF 52, Residential Care Centers for Children and Youth, and DCF 59, Shelter Care Facilities

The proposed rules remove obsolete language in chs. DCF 52 and 59 that requires the background information disclosure form to be notarized.

#### DCF 55, Subsidized Guardianship, and DCF 56, Foster Home Care for Children

The proposed rules update DCF 55 and 56 to reflect changes to background checks required under s. 48.685, Stats., as affected by 2017 Wisconsin Act 59, including the following:

- An agency or entity is required to obtain criminal history information from another state or conduct an FBI fingerprint-based criminal history search of a person who is the subject of the background check if the person has not been a resident of this state at any time within a specified number of years prior to the search. 2017 Wisconsin Act 59 extended this time period from 3 years to 5 years preceding the search.
- Prior to 2017 Wisconsin Act 59, s. 48.685 (4m), Stats., provided that, unless a person has demonstrated that the person has been rehabilitated, the person is barred from licensure, employment or contract, or nonclient residency if the person has been convicted of a serious crime specified in s. 48.685 (1) (c), Stats. 2017 Wisconsin Act 59 amended s. 48.685 (4m), Stats., to add the following reasons a person may be barred:
  - The person is the subject of a pending criminal charge alleging that the person committed a serious crime specified in s. 48.685 (1) (c), Stats.,
  - The person has been adjudicated delinquent for committing a serious crime specified in s. 48.685 (1) (c), or is the subject of a delinquency petition alleging that the person committed a serious crime specified in s. 48.685 (1) (c), Stats.

**Summary of Factual Data and Analytical Methodologies**

The proposed rules include orders of a tribal court located in Wisconsin in eligibility for long-term kinship care, clarify language, and update child welfare rules that are superseded by, or in conflict with, a state statute.

**Summary of Related Federal Law**

The federal Family First Prevention Services Act of 2018 requires a background check for all workers in congregate care facilities, including residential care centers for children and youth, group homes, and shelter care facilities.

**Comparison to Adjacent States**

Not applicable

**Effect on Small Businesses**

The proposed rules affect small businesses as defined in s. 227.114 (1), Stats., but have no or minimal effect on these businesses.

**Analysis Used to Determine Effect on Small Businesses**

The rules make technical corrections and clarifications.

**Agency Contacts**

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## **Place Where Comments are to be Submitted and Deadline for Submission**

Comments may be submitted to Elaine Pridgen, Department of Children and Families, 201 W. Washington Ave, P.O. Box 8916, Madison, WI, 53708-8916 or dcfpublichearing@wisconsin.gov. The comment deadline is January 25, 2022.

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### **Rule Text**

#### **SECTION 1. DCF 12.01 (1) and (note) are amended to read:**

**DCF 12.01 (1)** This chapter is promulgated under the authority of ss. 48.67 (intro.), 48.685, and 227.11 (2) (a), Stats., to specify procedures necessary to implement background checks required under s. 48.685, Stats., for caregivers, congregate care workers, and nonclient residents at an entity or with a caregiver specified in s. DCF 12.02 (4) (c).

**Note:** For further information on the scope of the ~~caregiver~~ background check, see s. DCF 12.02 for definitions of terms used in this subsection.

#### **SECTION 2. DCF 12.02 (2), (3) (a), and (4) (b) (intro.) are amended to read:**

**DCF 12.02 (2)** “Background information disclosure” means the form prescribed by the department on which a person provides information for purposes of the ~~caregiver~~ background check.

**(3) (a)** A barrier to a person’s eligibility for regulatory approval, employment, or contract as a caregiver or congregate care worker.

**(4) (b) (intro.)** A person who is, or is expected to be, an employee, a temporary employee, a student participating in a clinical or practicum at an entity as part of ~~his or her~~ the curriculum, or a contractor of an entity if all of the following apply:

#### **SECTION 3. DCF 12.02 (5) is renumbered DCF 12.02 (1m) and amended to read:**

**DCF 12.02 (1m)** “~~Caregiver background~~ Background check” means the requirements in s. 48.685, Stats.

**SECTION 4. DCF 12.02 (8) (c) is amended to read:**

**DCF 12.02 (8) (c)** A person who is 18 to 21 years old, is receiving independent living services under 42 USC 677 (a) from an agency, is no longer placed in out-of-home care, and is residing in the foster home in which ~~he or she~~ the person was previously placed.

**SECTION 5. DCF 12.02 (8g) and (8r) are created to read:**

**DCF 12.02 (8g)** “Congregate care facility” means a group home, shelter care facility, or residential care center for children and youth.

**(8r)** “Congregate care worker” means an adult who works in a congregated care facility. “Congregate care worker” includes a person who has or is seeking a license to operate a congregated care facility and does not include an unpaid volunteer.

**SECTION 6. DCF 12.02 (14) (k) and (Note), (15) (b), (21) (d), (22) (b), (26) (b) 1., 2., and 6. are amended to read:**

**DCF 12.02 (14) (k)** A temporary employment agency that provides caregivers or congregated care workers to another entity.

**Note:** See s. 48.57 (3p), Stats., and s. DCF 58.05 for information on background checks required for kinship care.

**(15) (b)** A determination made before January 1, 2015, that a person has abused or neglected a child under s. 48.981 (3) (c) 4., ~~2014~~ Stats., if the determination has not been reversed or modified on appeal.

**(21) (d)** Approval of the person subject to the ~~caregiver~~ background check for a child care program to be established or contracted for by a school board under s. 120.13 (14), Stats.

**(22) (b)** Employment or contract with an entity to be a caregiver or a congregated care worker for the entity.

(26) (b) 1. The policies or procedures the person must follow in performing ~~his or her~~ the caregiving duties.

2. The conditions under which the person performs ~~his or her~~ the caregiving duties.

6. The compensation the person may receive for performing ~~his or her~~ the caregiving duties.

**SECTION 7. DCF 12.03 (2) is amended to read:**

**DCF 12.03 (2) TIMELY BID.** Each agency and entity specified in s. DCF 12.02 (14) (a) to (g) shall require the background information disclosure to be completed by caregivers, congregate care workers, and nonclient residents no more than 120 days before the agency or entity submits a request for information required under s. 48.685 (2) (am) or (b) and (3) (a) or (b), Stats.

**SECTION 8. DCF 12.04 (title) and (2) (c) are amended to read:**

**DCF 12.04 (title) Contracting for ~~caregiver~~ background checks.**

(2) (c) The entity shall retain the most recent documentation received under par. (b) for caregivers and congregate care workers that the entity employs or contracts with, so the documentation may be promptly retrieved and reviewed by the agency that regulates the entity.

**SECTION 9. DCF 12.05 (1) is amended to read:**

**DCF 12.05 (1)** If a person who is the subject of a ~~caregiver~~ background check served in a branch of the U.S. armed forces within the previous 3 years, including any reserve component, the agency or entity shall make every reasonable effort to obtain the discharge status of that person, either from the discharge papers issued to the person

**SECTION 10. DCF 12.06 (1) (intro.), (a) 1. to 4., and (Note) are amended to read:**

**DCF 12.06 (1) CAREGIVERS AND CONGREGATE CARE WORKERS.** (intro.) To determine whether a caregiver's or a congregate care worker's conviction or delinquency adjudication for

an offense that is not a serious crime is substantially related to the care of a client or the activities of a program for purposes of s. 48.685 (5m), Stats., an agency or entity shall consider all of the following:

- (a) 1. The nature and scope of the caregiver's or congregate care worker's client contact.
2. The scope of the discretionary authority and independent judgment the caregiver or congregate care worker has to make decisions or take actions that affect the care of clients.
3. The opportunity the job or caregiving role presents for committing similar crimes.
4. The extent to which acceptable ~~caregiving~~ performance in the job or caregiving role requires the trust and confidence of clients and the parents or guardians of clients.

**Note:** Form DCF-F-CFS2261-E, ~~Caregiver~~ *Background Checks Substantially Related Investigation Report*, is available, but is optional, for documentation of the determination as required in sub. (3). If a home study is required for foster care licensure, subsidized guardianship, or adoption approval, county departments and child-placing agencies must include documentation of the determination in the home study.

An agency or entity is required to determine whether a criminal conviction or delinquency adjudication for an offense that is not a "serious crime" as defined in s. DCF 12.02 (24) is substantially related to the care of children or the activities of the program. It may be helpful to contact the appropriate clerk of court to obtain a copy of the criminal complaint and judgment of conviction as part of that investigation and determination. Section 48.685 (2) (bb), Stats., requires an agency or entity to contact the appropriate clerk of court to obtain a copy of the criminal complaint and judgment of conviction for a violation of s. 940.19 (1), 940.195, 940.20, 941.30, 942.08, 947.01 (1), or 947.013, Stats., if the conviction was within the past 5 years.

~~A person who was refused employment or who had his or her employment terminated and believes he or she may have been discriminated against, may file a complaint under s. 111.335, Stats., with the Equal Rights Division, Department of Workforce Development, P.O. Box 8928, Madison, WI 53708-8928 or telephone 608-266-6860.~~

**SECTION 11. DCF 12.08 (1) (intro.), (a), and (b), (2) (a) 4. and 5. and (b) 1., and (3)**

**(intro.), (a), and (b) are amended to read:**

**DCF 12.08 (1) ENTITY REPORTING OF OFFENSE.** (intro.) An entity shall report to the agency that gave regulatory approval as soon as the entity knows, or should have known, that any of the following apply to a caregiver, congregate care worker, or nonclient resident at the entity:



(a) The person is the subject of a delinquency petition alleging that the person committed a serious crime ~~on or after his or her 10th birthday~~.

(b) The person has been adjudicated delinquent ~~on or after his or her 10th birthday~~ for committing any crime.

(2) (a) 4. A corporation or limited liability company designates a new person to be subject to the ~~caregiver~~ background check.

5. A The name of a caregiver under s. DCF 12.02 (4) (a), congregate care worker, or a nonclient resident at the entity ~~changes his or her name~~ has been changed.

(b) 1. When a change specified under par. (a) 1. to 4. occurs regarding an entity, the entity shall submit a completed background information disclosure for the new person subject to the ~~caregiver~~ background check to the agency as soon as possible, but no later than the agency's next business day.

(3) ENTITY POLICY. (intro.) An entity shall include in its personnel or operating policies a provision that requires a person who is a caregiver specified in s. DCF 12.02 (4) (b) or a congregate care worker to notify the entity as soon as possible, but no later than the entity's next working day, if any of the following apply:

(a) The person is the subject of a delinquency petition alleging that the person committed a serious crime ~~on or after his or her 10th birthday~~.

(b) The person has been adjudicated delinquent ~~on or after his or her 10th birthday~~ for committing any crime.

**SECTION 12. DCF 12.09 (1) (a) 1. and 2. are amended to read:**

**DCF 12.09 (1) (a) 1.** Hires, employs, or contracts with a caregiver or congregate care worker or permits a nonclient resident to reside at an entity or with a caregiver specified in s. DCF 12.02

(4) (c) if the entity knows, or should know, that the caregiver, congregate care worker, or nonclient resident is barred under s. 48.685 (4m) (b) or that a nonclient resident is ineligible for residency under s. 48.685 (5m), Stats.

2. Violates any provision in s. 48.685, Stats., or this chapter regarding caregivers specified in s. DCF 12.02 (4) (b) or (c) or congregate care workers, including requiring completion of a background information disclosure as required under s. 48.685 (6), and conducting the ~~caregiver~~ background check as required under s. 48.685 (2) and (3), Stats.

**SECTION 13. DCF 12.10 (1) (b) is amended to read:**

**DCF 12.10 (1) (b)** A person who is, or is expected to be, a caregiver specified in s. DCF 12.02 (4) (b) or a congregate care worker for an entity that is regulated by the agency.

**SECTION 14. DCF 12.11 (intro.) is amended to read:**

**DCF 12.11 Eligibility to request rehabilitation review.** (intro.) A person who is not eligible under s. 48.685 (4m), Stats., to receive regulatory approval, to be employed as caregiver or a congregate care worker, to contract with an entity to be a caregiver or a congregate care worker, or to reside at an entity or with a caregiver specified in s. DCF 12.02 (4) (c) may request a rehabilitation review, unless any of the following apply:

**SECTION 15. DCF 12.13 (4) (intro.) and (5) (c) 1. b. and 3. b. are amended to read:**

**DCF 12.13 (4) REHABILITATION DECISION FACTORS.** (intro.) After reviewing the information obtained, the review panel shall decide whether the person who is the subject of the rehabilitation review has demonstrated by clear and convincing evidence that ~~he or she~~ the person is rehabilitated for purposes of receiving regulatory approval, employment as a caregiver or a congregate care worker, contracting with an entity to be a caregiver or a congregate care worker,

or residing at an entity or with a caregiver specified in s. DCF 12.02 (4) (c). 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 a congregate care worker, contract to be a caregiver or a congregate care worker, or nonclient residency at an entity.

3. b. The types of approval that were requested and are denied in the decision, such as regulatory approval, employment as a caregiver or a congregate care worker, contract to be a caregiver or a congregate care worker, or nonclient residency at an entity.

**SECTION 16. DCF 12.14 (1) (b), (2), and (3) are amended to read:**

**DCF 12.14 (1) (b)** A person who appeals under this subsection shall bear the burden of proving, by a preponderance of the evidence, that the rehabilitation review panel for the agency erroneously exercised its discretion in deciding that the person did not show sufficient evidence to demonstrate that ~~he or she~~ the person is rehabilitated.

(2) A person who receives an adverse decision from the secretary of the department or ~~his or her~~ the secretary's designee under sub. (1) may request a contested case hearing under ch. 227, Stats., and ch. HA 1 within 10 days after the date of the written decision by the department.

(3) A person who receives an adverse decision from a county department director or ~~his or her~~ the director's designee has the right to appeal the decision under ch. 68, Stats.

**SECTION 17. DCF 12.15 (4) and (5) are amended to read:**

**DCF 12.15 (4) WITHDRAWALNOTICE.** If an agency withdraws a rehabilitation approval, it shall issue a written notice that explains the reasons for the withdrawal and informs the person whose approval has been withdrawn that ~~he or she may~~ an appeal as provided in is available under s. DCF 12.14.

(5) REPORTING TO THE DEPARTMENT. If an agency withdraws rehabilitation approval and the withdrawal results in a bar to regulatory approval, employment as a caregiver or a congregate care worker, contracting with an entity to be a caregiver or a congregate care worker, or residing at an entity, the agency that withdraws the rehabilitation approval shall immediately report the withdrawal to the department.

**SECTION 18. DCF 12.16 (3) is amended to read:**

**DCF 12.16 (3) INELIGIBILITY OR DENIAL.** If an agency determines that a person's previous rehabilitation approval may not be accepted under sub. (1) or the agency denies an eligible rehabilitation approval under sub. (2) (c), the agency shall inform the person of ~~his or her~~ the right to submit an application for a new rehabilitation review under s. DCF 12.12 and shall process a submitted application under s. DCF 12.13.

**SECTION 19. DCF 13.02 (14) (b) is amended to read:**

**DCF 13.02 (14) (b)** A determination made before January 1, 2015, that a person has abused or neglected a child under s. 48.981 (3) (c) 4., ~~2011~~ Stats., if the determination has not been reversed or modified on appeal.

**SECTION 20. DCF 39.03 (3) is repealed.**

**SECTION 21. DCF 39.03 (14) (b) is amended to read:**

**DCF 39.03 (14) (b)** A hospital social worker, ~~as described in s. DCF 124.25~~, case worker, or social work assistant.

**SECTION 22. DCF 39.08 (6) is amended to read:**

**DCF 39.08 (6)** Nothing in this chapter shall affect the manner in which a law enforcement officer, emergency medical technician, or hospital staff member performs the duties prescribed by law or under ~~his or her~~ licensure or certification.

**SECTION 23. DCF 39.09 (5) is repealed and recreated to read:**

**DCF 39.09 (5)** If required under s. 48.981 (3), Stats., a law enforcement officer notified under sub. (4) shall make a referral to a county department or the department in a county having a population of 750,000 or more.

**SECTION 24. DCF 40.02 (3) is amended to read:**

**DCF 40.02 (3)** “Agency” means a county department under s. 46.22 or 46.23, Stats., or in a county having a population of ~~500,000~~ 750,000 or more, the department or a licensed child welfare agency that is under contract with the department to fulfill the department’s duties specified under s. 48.981 (3) (c) 5m., Stats.

**SECTION 25. DCF 40.04 (3) (b) 3. c. and 4. and (c) 2. are amended to read:**

**DCF 40.04 (3) (b) 3. c.** The person is enrolled in an academic program that leads to license, certification, or employment or contract position that will be subject to the background check requirements under s. 48.685 or 50.065, Stats., and the person can be expected to complete the academic program within 150 days after the date of ~~his or her~~ the request for a hearing with the division of hearings and appeals.

4. A person who requests that the division of hearings and appeals expedite ~~his or her~~ the appeal shall indicate the request on ~~his or her~~ the request for a hearing and provide documentation that a qualifying condition under subd. 3. applies ~~to him or her~~.

(c) 2. The person may request a review to demonstrate that ~~he or she~~ the person has been rehabilitated.

**SECTION 26. DCF 50.02 (11) (b) is amended to read:**

**DCF 50.02 (11) (b)** A determination made before January 1, 2015, that a person has abused or neglected a child under s. 48.981 (3) (c) 4., ~~2011~~ Stats., if the determination has not been reversed or modified on appeal.

**SECTION 27. DCF 52.01 is amended to read:**

**DCF 52.01 Authority and purpose.** This chapter is promulgated under the authority of s. 48.67, Stats., to ensure that residential care centers for children and youth protect and promote the health, safety and welfare of residents, respect the rights of individual residents, provide the most appropriate conditions possible for each resident, help each resident develop socially acceptable patterns of behavior, develop resident treatment plans consistent with the state's permanency planning policy to support the integrity of the family, and help each resident return as quickly as possible to ~~his or her~~ the resident's family or achieve permanency through adoption or guardianship. This chapter is also promulgated under the authority of s. 49.343, Stats., to establish the rate that a residential care center may charge for its services and to promote efficient provision of services.

**SECTION 28. DCF 52.03 (1) is amended to read:**

**DCF 52.03 (1)** "Aftercare" means follow-up services provided to a young person after ~~he or she~~ the young person is discharged from a center.

**SECTION 29. DCF 52.12 (6) (a) 4. is amended to read:**

**DCF 52.12 (6)** (a) 4. The center director shall ensure that when a supervisor is absent, each staff member supervised by that person knows to whom ~~he or she~~ the staff member reports.

**SECTION 30. DCF 52.21 (6), (7) (a), (b), and (c), and (8) (b) are amended to read:**

**DCF 52.21 (6) PRE-PLACEMENT VISIT.** A center shall arrange, whenever possible, with the placing person or agency for a pre-placement visit for the prospective resident and, whenever possible, shall invite the parent or guardian to participate. During a pre-placement visit, center staff shall provide the prospective resident and ~~his or her~~ the prospective resident's parent or guardian with an orientation to the center's program.

(7) (a) Orient the new resident and ~~his or her~~ the resident's parent or guardian and legal custodian to the center's facilities and program, if this was not done under sub. (6).

(b) Help the new resident to adjust to the effects of separation from ~~his or her~~ family and to center placement.

(c) Give the new resident and ~~his or her~~ the resident's parent or guardian and legal custodian copies of the house rules, including rules on visiting, expected behavior and sanctions for misbehaving and resident rights and grievance and complaint procedures, with explanations of them.

**(8) (b) Observation.** An observation shall be made on each person at the time of ~~his or her~~ admission to the center by a person capable of recognizing common signs of communicable disease or other evidence of ill health. If the person admitted shows overt signs of communicable disease or other evidence of ill health, the center shall make arrangements for immediate examination by a physician. If the person admitted has a risk of having a sexually transmitted disease because of recent sexual abuse history or sexual activity, the center shall immediately consult with a physician and follow whatever precautionary measures are

recommended by the physician and shall make arrangements for examination by a physician to take place as soon as possible.

**SECTION 31. DCF 52.22 (2) (b) 1. and 5. are amended to read:**

DCF 52.22 (2) (b) 1. The resident's treatment goals and permanency planning goals which specify whether the resident is to return as quickly as possible to ~~his or her~~ the resident's family or attain another placement providing long-term stability.

5. Identification of services and their arrangements on behalf of the resident and ~~his or her~~ the resident's family.

**SECTION 32. DCF 52.23 (2) (c) is amended to read:**

DCF 52.23 (2) (c) The center shall ensure that at discharge a resident's personal clothing and belongings go with ~~him or her~~ the resident.

**SECTION 33. DCF 52.41 (1) (c) 8. is repealed and recreated to read:**

DCF 52.41 (1) (c) 8. An explanation of any medical treatment that a resident will receive is provided to the resident in language that is suitable to the resident's age and developmental level.

**SECTION 34. DCF 52.42 (7) (d) 4. is amended to read:**

DCF 52.42 (7) (d) 4. ~~Except as otherwise specified in a court order or by another lawful authority, the~~ The resident's parent or guardian or the legal custodian may withdraw ~~his or her~~ the written informed consent to the resident being placed in a locked unit at any time, orally or in writing. ~~The~~ Except as otherwise specified in a court order or by another lawful authority, the resident shall be transferred to an unlocked unit promptly following withdrawal of informed consent.



**SECTION 35. DCF 52.48 (1) (b) is amended to read:**

DCF 52.48 (1) (b) Furnish each resident with appropriate size clothing, appropriate to the season and comparable to that of children of similar age in the community, and arrange for each resident to participate in the selection and purchase of ~~his or her~~ the resident's own clothing to the maximum extent feasible. Each resident's clothing shall be identified as ~~his or her~~ the resident's own.

**SECTION 36. DCF 52.58 (2) (b) is amended to read:**

DCF 52.58 (2) (b) "Short-term resident readmission" means a short-term resident whose readmission to the center for another short-term stay occurs less than 90 days ~~from his or her~~ after a previous discharge from that center and whose stay at the center may be of varying periodic episodes within a 90-day period.

**SECTION 37. DCF 52.59 (5) (d) 2. and (7) (b) 2. are amended to read:**

DCF 52.59 (5) (d) 2. Procedures for obtaining identifying information at the time of admission on the child and ~~his or her~~ the child's family and information about current special needs of the child, including usual day activities; transportation arrangements; any appointments; current health problems; special equipment used; communication issues; behavioral issues; eating habits, schedule and preferences; sleeping habits and any usual bedtime routine; toileting concerns; safety concerns; discipline or behavioral management recommendations; preferred leisure time activities; and any other comments from the parent or regular caregiver.

(7) (b) 2. The written care plan shall provide for necessary service supports to meet social, emotional adjustment, medical, and dietary needs; physical environment accommodation; means for the respite care child to contact ~~his or her~~ the child's parent or other regular caregiver; accommodations to meet physical disabilities such as requiring, if needed by the child ~~or youth~~, a

TTY device for the hearing impaired, handrails, or visual devices; and a planned variety of recreational activities. The educational needs of the child shall be attended to while in placement as prescribed by the parent or other regular caregiver.

**SECTION 38. DCF 52.61 (7) (a) 2. (intro.) is amended to read:**

**DCF 52.61 (7) (a) 2. (intro.)** Except as provided under subd. 3., the administrator of the department's division of ~~children and family services~~ safety and permanence or ~~his or her~~ a designee shall make the need determination decision based on the following criteria:

**SECTION 39. DCF 52.62 (2) (c) 3. is amended to read:**

**DCF 52.62 (2) (c) 3.** A ~~notarized statement~~ completed and signed by the applicant on a background information disclosure on a form, provided prescribed by the department ~~concerning~~ any specified criminal conviction or pending charge.

**SECTION 40. DCF 55.01 (Note) is amended to read:**

**DCF 55.01 Note:** Before July 1, 2011, the Bureau of Milwaukee Child Welfare administered a subsidized guardianship demonstration project that was authorized by a federal waiver and s. 48.62 (5), 2009 Stats.

~~The date in a statutory citation means that was the last edition of the statutes in which that provision appears. In 2011 Wisconsin Act 32, some paragraphs of s. 48.62 (5), 2009 Stats., were repealed and others were renumbered and amended to create s. 48.623, Stats., so s. 48.62 (5), 2009 Stats., last appeared in the 2009 edition of the statutes.~~

**SECTION 41. DCF 55.02 (2), (5m) (b), and (10) (Note) are amended to read:**

**DCF 55.02 (2)** "Background information disclosure" means the form prescribed by the department on which a person provides information for purposes of the ~~caregiver~~ background check.

**(5m)** (b) A determination made before January 1, 2015, that a person has abused or neglected a child under s. 48.981 (3) (c) 4., 2011 Stats., if the determination has not been reversed or modified on appeal.

**(10) Note:** Sections 48.38 (1) and 938.38 (1) (b) provide that “permanency plan” means “a plan designed to ensure that a child is reunified with ~~his or her~~ the child’s family whenever appropriate, or that the child quickly attains a placement or home providing long-term stability.”

**SECTION 42. DCF 55.03 (1) (a) 1. (intro.) and b. and 3. are amended to read:**

**DCF 55.03 (1) (a) 1. (intro.)** The child has been removed from ~~his or her~~ the child’s home under any of the following:

b. A Wisconsin court order or a substantially similar Wisconsin tribal court order containing a finding that continued placement of the child in ~~his or her~~ the child’s home would be contrary to the welfare of the child.

3. Adoption of the child or return of the child to ~~his or her~~ the child’s home is not in the child’s best interests.

**SECTION 43. DCF 55.04 (1) and (2) are amended to read:**

**DCF 55.04 (1)** An agency shall explain to each foster parent who is a relative of or like-kin to a foster child for whom ~~he or she~~ the foster parent is providing care and maintenance the foster parent’s eligibility for services and the expectations involved with the following permanency options for the child:

**(2)** An agency shall use a form prescribed by the department to explain the permanency options under sub. (1), and the relative or like-kin foster parent shall sign the form acknowledging that the options have been explained to ~~him or her~~ the foster parent following the explanation. The agency shall retain a signed copy of the form and attach the signed form to the

subsidized guardianship agreement under s. DCF 55.06 if the relative or like-kin foster parent decides to pursue subsidized guardianship for the child.

**SECTION 44. DCF 55.05 (1) (a) and (c) are amended to read:**

**DCF 55.05 (1) (a)** The efforts that the agency has made to return the child to ~~his or her~~ the child's home and the reasons the agency has determined that return to the home is not in the child's best interests.

(c) Reasons a permanent placement with a subsidized guardianship arrangement is in the child's best interests, including the ability of the prospective guardian to manage the child's relationship with ~~his or her~~ the child's parents.

**SECTION 45. DCF 55.07 (Note) is amended to read:**

**DCF 55.07 Note:** The adjustment of a monthly payment is an adjustment to the supplemental payment, which a guardian is not eligible to receive if ~~his or her~~ the guardian's foster home was certified at Level 1.

**SECTION 46. DCF 55.11 (3) (a) 1. is amended to read:**

**DCF 55.11 (3) (a) 1.** If a recipient requests a hearing within 10 days after the date of the notice that ~~his or her~~ the recipient's subsidized guardianship payments are being decreased or discontinued, those payments may not be decreased or discontinued until a decision is rendered after the hearing.

**SECTION 47. DCF 55.12 (2) is amended to read:**

**DCF 55.12 (2) TIME-LIMITED.** The agency shall provide the subsidized guardianship payments to an interim caretaker who is eligible under sub. (1) until ~~he or she~~ the interim caretaker is licensed as a foster parent under ch. DCF 56, except the agency may not provide subsidized guardianship payments to an interim caretaker for more than 12 months.

**SECTION 48. DCF 55.13 (2) (d) and (4) (intro.) are amended to read:**

**DCF 55.13 (2) (d)** If the agency is informed that a nonclient resident in the interim caretaker's or prospective successor guardian's home resided outside the state of Wisconsin at any time during the ~~3~~ 5-year period before the search, the agency shall obtain a criminal history records search from any state in which the person is or was a resident.

**(4) OFFENSES THAT ARE A BAR. (intro.)** Unless the person has demonstrated that ~~he or she~~ the person has been rehabilitated under s. 48.685 (5) or (5c), Stats., and ch. DCF 12, an agency may not provide subsidized guardianship payments to an interim caretaker or determine that a prospective successor guardian is eligible to enter into a subsidized guardianship agreement if any of the following apply regarding the interim caretaker or prospective successor guardian or a nonclient resident in the interim caretaker's or prospective successor guardian's home:

**SECTION 49. DCF 55.13 (4) (a) is repealed and recreated to read:**

**DCF 55.13 (4) (a) 1.** The person has been convicted of a crime specified in s. 48.685 (1) (c), Stats., or is the subject of a pending criminal charge alleging that the person committed a crime specified in s. 48.685 (1) (c), Stats.

2. The person has been adjudicated delinquent for committing a crime specified in s. 48.685 (1) (c), Stats., or is the subject of a delinquency petition alleging that the person committed a crime specified in s. 48.685 (1) (c), Stats.

**SECTION 50. DCF 56.02 (2) (b) 4. is repealed and recreated to read:**

**DCF 56.02 (2) (b) 4.** In the space indicated on the exception request form, the licensing agency's authorized representative shall state whether the licensing agency supports the request,

does not support the request, or supports some alternative to the request and shall justify the licensing agency's position and sign and date the request form.

**SECTION 51. DCF 56.03 (11s) (b), (15), (27r), and (30) are amended to read:**

**DCF 56.03 (11s) (b)** A determination made before January 1, 2015, that a person has abused or neglected a child under s. 48.981 (3) (c) 4., ~~2011~~ Stats., if the determination has not been reversed or modified on appeal.

**(15)** "Foster parent" means a person with primary responsibility for the care and supervision of one or more foster children placed in ~~his or her~~ the foster home and in whose name the foster home is licensed under this chapter.

**(27r)** "Normalcy" means the child's ability to easily engage in healthy and age or developmentally appropriate activities that promote ~~his or her~~ well-being, such as participation in social, scholastic, and enrichment activities.

**(30)** "Permanency plan" means a plan required under s. 48.38 (2), Stats., that is designed to ensure that a child placed in out-of-home care is safely reunified with ~~his or her~~ the child's family whenever appropriate, or that the child quickly attains a safe placement or home providing long-term stability.

**SECTION 52. DCF 56.04 (4) (a) 2. and (Note), and 4. and (b) 2. and 5m. are amended to read:**

**DCF 56.04 (4) (a) 2.** Verification of homeowner's or renter's insurance coverage required under s. DCF 56.05 (4) or a request for a waiver under s. DCF 56.05 (5), and verification of vehicle liability insurance required under s. DCF 56.05 (3) if the applicant plans to transport foster children in ~~his or her~~ the applicant's own vehicle. Verification means that the licensing

agency representative has personally seen the appropriate documentation. A licensing agency need not retain a copy of the documentation in its files.

**Note:** ~~Section 344.62, Stats., requires motor~~ Motor vehicle liability insurance ~~effective June 1, 2010~~ is required under s. 344.62, Stats.

4. If a member of the household of an applicant who is a relative of a foster child is not covered by health insurance or a medical examination would be a significant financial burden to the household member, the licensing agency may grant an exception to the requirement in subd. 3. If the licensing agency grants this exception, the household member shall submit a personally signed statement that indicates any physical or mental conditions ~~he or she~~ the household member has that would affect the ability of the family to provide care for a foster child or threaten the health or safety of a foster child.

(b) 2. Verification of homeowner's or renter's insurance coverage required under s. DCF 56.05 (4) or a request for a waiver under s. DCF 56.05 (5), and verification of vehicle liability insurance required under s. DCF 56.05 (3) if the applicant plans to transport foster children in ~~his or her~~ the applicant's own vehicle. Verification means that the licensing agency representative has personally seen the appropriate documentation. A licensing agency need not retain a copy of the documentation in its files.

5m. If a member of the household of an applicant who is a relative of a foster child is not covered by health insurance or a medical examination would be a significant financial burden to the household member, the licensing agency may grant an exception to the requirement in subd. 3. If the licensing agency grants this exception, the household member shall submit a personally signed statement that indicates any physical or mental conditions ~~he or she~~ the household member has that would affect the ability of the family to provide care for a foster child or threaten the health or safety of a foster child.

**SECTION 53. DCF 56.05 (1) (a) 2., (b) 1. e., (c) 2. e., and (g) 3. and 4., (3) (a), and (5) (b) and (c) (Note) are amended to read:**

**DCF 56.05 (1) (a) 2.** The applicant or licensee shall give truthful and sufficient information to enable the licensing agency to verify whether or not ~~he or she~~ the applicant or licensee meets the requirements under subd. 1.

(b) 1. e. An outlook regarding ~~his or her~~ the licensee's own history that indicates that any negative aspects have been recognized and adequately addressed.

(c) 2. e. Participate on a regularly scheduled basis, but at least annually, in the evaluation of ~~his or her~~ the foster parent's performance ~~as a foster parent~~ operating a foster home with a Level 3 to 5 certification under s. DCF 56.20.

(g) 3. The person has been adjudicated delinquent for committing a crime ~~on or after his or her 12th birthday.~~

4. The person is the subject of a delinquency petition alleging that the person committed a crime ~~on or after his or her 12th birthday.~~

**(3) (a)** An applicant for either initial licensing or for relicensing who plans to transport foster children in ~~his or her~~ the applicant's own vehicle shall provide the licensing agency with documentation of current vehicle liability insurance coverage and shall ensure that the insurance coverage continues in force throughout the term of licensure.

**(5) (b)** A foster parent or an applicant for a foster home license may request a waiver of the requirement under sub. (4) (a) if ~~he or she~~ the foster parent or applicant is unable to obtain the required insurance, the insurance policy that ~~he or she~~ the foster parent or applicant had was canceled or payment of the premium for the required insurance would cause undue financial hardship.



(c) **Note:** A foster parent has limited liability under s. 895.485, Stats. This does not mean that ~~he or she~~ the foster parent has no liability. In the event that a foster parent is sued, the foster parent may be liable for any judgment and attorney's fees. As such, a waiver of the insurance requirement should be made only in rare circumstances.

**SECTION 54. DCF 56.055 (2) (d), (3) (a) and (b), and (4) (intro.) are amended to read:**

**DCF 56.055 (2) (d)** Obtain a criminal history records search from any other jurisdiction in which the person is or was a resident if the agency is informed that a nonclient resident in the applicant's home resided outside the state of Wisconsin at any time during the ~~3~~ 5-year period before the search.

**(3) (a)** If the results of the criminal history records search under (2) (a), (b), or (d) indicate a charge of a crime specified in s. 48.685 (1) (c) ~~or (5) (b)~~, Stats., or comparable law in any other jurisdiction, but do not completely and clearly indicate the final disposition of the charge, the agency shall make every reasonable effort to contact the appropriate clerk of court to determine the final disposition of the charge.

(b) If the background information disclosure indicates a charge or conviction of a crime specified in s. 48.685 (1) (c) ~~or (5) (b)~~, Stats., or comparable law in any other jurisdiction, but the results of the criminal history records search under sub. (2) (a), (b), or (d) do not include the charge or conviction, the agency shall make every reasonable effort to contact the appropriate clerk of court to obtain a copy of the criminal complaint and the final disposition of the complaint.

**(4) OFFENSES THAT ARE A BAR. (intro.)** Unless the person has demonstrated that ~~he or she~~ the person has been rehabilitated under s. 48.685 (5) or (5c), Stats., and ch. DCF 12, an applicant or licensee is unqualified to hold a license if the applicant or a nonclient resident in the foster home meets any of the following conditions:

**SECTION 55. DCF 56.055 (4) (a) is repealed and recreated to read:**

**DCF 56.055 (4)** (a) 1. The person has been convicted of a crime specified in s. 48.685 (1) (c), Stats., or is the subject of a pending criminal charge alleging that the person committed a crime specified in s. 48.685 (1) (c), Stats.

2. The person has been adjudicated delinquent for committing a crime specified in s. 48.685 (1) (c), Stats., or is the subject of a delinquency petition alleging that the person committed a crime specified in s. 48.685 (1) (c), Stats.

**SECTION 56. DCF 56.08 (6) (c) 1. is amended to read:**

**DCF 56.08 (6) (c) 1.** No foster child may operate any machinery or equipment that is beyond ~~his or her~~ the child's knowledge or mental or physical capability.

**SECTION 57. DCF 56.09 (1) (i) and (m) (Note), (2m) (a) and (b) (intro.), (5) (d), (6) (b), (7), (9) (b) and (c), and (12) (intro.) are amended to read:**

**DCF 56.09 (1) (i)** Lets a child keep and wear ~~his or her~~ the child's own clothing as appropriate to the season or setting unless the clothing is too small for the child, is prohibited by the child's case manager, or is otherwise unsuitable for wear.

(m) **(Note):** The primary intent of par. (m) is to allow a foster child to have clothes, books, recorded music, and similar items ~~which that~~ that the child enjoys. If a foster parent does not wish to have certain types of ~~such materials~~ in ~~his or her~~ the foster home, the foster parent should communicate that in writing to the licensing agency.

**(2m) (a) Family-like environment.** A foster parent shall promote normalcy and the healthy development of a child placed in ~~his or her~~ the foster home with a family-like environment that supports the child's right to participate in extracurricular, enrichment, cultural, and social activities and have experiences that are similar to those of the child's peers.

(b) *Reasonable and prudent parent standard.* When a foster parent is making a decision concerning participation in an activity by a child placed in ~~his or her~~ the foster home, the foster

parent shall use a decision-making standard that is characterized by careful and sensible parental decisions that maintain the health, safety, best interests, and cultural, religious, and tribal values of a child while at the same time encouraging the emotional and developmental growth of the child, if the activity meets the conditions in subd. 1. and 2., as follows:

(5) (d) A licensee may not subject any foster child to verbal abuse, profanity, derogatory remarks about the child or ~~his or her~~ the child's family or to threats to expel the child from the home.

(6) (b) Clothing purchased for a foster child or otherwise provided to a foster child with the understanding that the clothing belongs to the foster child shall be the property of the child and shall be given to the child to take when ~~he or she~~ the child leaves the foster home.

(7) PERSONAL BELONGINGS. When a foster child leaves a foster home, ~~he or she~~ the child may take all special equipment or other personal belongings that the child had when placed in the foster home, that were given to the child to keep, that the child received as gifts, or that were purchased on behalf of the child with public funds, unless the items are permanently affixed to the foster home.

(9) (b) The foster parent shall ensure that each foster child is provided a quantity and variety of foods sufficient to meet the child's nutritional needs and to maintain ~~his or her~~ the child's health and growth.

(c) No foster child may be forced to eat against ~~his or her~~ the child's wishes except by order of and under the supervision of a physician.

(12) CONFIDENTIALITY. (intro.) The foster parent and other persons in the household having access to confidential information about the foster child and ~~his or her~~ the child's family may not discuss or otherwise disclose that information to any other person while the child is in the foster home or after the child leaves the foster home, except as follows:

**SECTION 58. DCF 56.13 (4) (b), (5) (a) 1. a. and (c) 2. b. and c., (6) (a) 1. a., (c) 2. b., (f) 6. a. and d. and 9., and (8) (b) are amended to read:**

**DCF 56.13 (4) (b) *References.*** An applicant for certification to operate a Level 2 foster home shall submit at least 3 favorable reference letters written by persons unrelated to the applicant. A reference letter shall include a statement indicating how long the person giving the reference has known the applicant, under what circumstances ~~he or she~~ the person knows the applicant, and ~~his or her~~ the person's knowledge of the applicant's characteristics under s. DCF 56.05 (1) (b).

**(5) (a) 1. a.** A minimum of one year of experience as a foster parent or kinship care provider with a child placed in ~~his or her~~ the applicant's home for at least one year.

(c) 2. b. Under what circumstances ~~he or she~~ the person knows the applicant.

c. ~~His or her~~ The person's knowledge of the applicant's qualifications and characteristics under s. DCF 56.05 (1) (b).

**(6) (a) 1. a.** A minimum of one year of experience with children with a level of need of 3 as a foster parent or kinship care provider with a child placed in ~~his or her~~ the applicant's home for at least one year.

(c) 2. b. Under what circumstances ~~he or she~~ the person knows the applicant.

(f) 6. a. Conduct and document a ~~caregiver~~ background check pursuant to s. 48.685, Stats., and ch. DCF 12.

d. Obtain favorable references from at least 3 non-relatives, with documentation by letter or by notes of a verbal contact. Documentation shall include how long the person giving the reference has known the applicant, under what circumstances ~~he or she~~ the person knows the applicant, and ~~his or her~~ the person's knowledge of the applicant's qualifications.

9. 'Background check.' A program manager of a Level 5 foster home shall require each program staff person to complete a background information disclosure form designated by the department and shall conduct a ~~caregiver~~ background check under s. 48.685, Stats., and ch. DCF 12 every 4 years or at any time within that period.

(8) (b) Make efforts to change the behavior or ameliorate the condition that, in whole or in part, resulted in the child's separation from ~~his or her~~ the child's family.

**SECTION 59. DCF 56.14 (7) (d) and (8) (a) are amended to read:**

**DCF 56.14 (7) (d)** A foster parent who operates a Level 2 foster home that is licensed before January 1, 2011, and who provides verification to the licensing agency that ~~he or she~~ the foster parent successfully completed a competency-based, pre-service foster parent training as described in the department's DCFS Memo Series 2002-12 is not required to comply with par. (c).

(8) (a) *Individualized training plan.* At the time of renewal of a license to operate a foster home, the licensing agency and the foster parent shall evaluate the foster parent's overall performance and develop an individualized training plan for the foster parent based on ~~his or her~~ the foster parent's demonstrated need for training in particular topics or in managing specific case situations.

**SECTION 60. DCF 56.21 (3) (b) is amended to read:**

**DCF 56.21 (3) (b)** Have direct care experience or training in working with children with conditions similar to those of the foster child for whom ~~he or she~~ the respite care worker will be caring.

**SECTION 61. DCF 58.02 (4) (b) 3. a., (8), and (14) (b) are amended to read:**

**DCF 58.02 (4)** (b) 3. a. A court order under s. 48.355, 48.357, 48.365, 938.355, 938.357, or 938.365, Stats., that terminates under s. 48.355 (4) (b) or 938.355 (4) (am), Stats., after the person attains 18 years of age, or a substantially similar ~~Wisconsin~~ tribal law court order.

**(8)** “Court order” means a court order under s. 48.21, 48.355, 48.217, 48.357, 48.365, 938.21, 938.217, 938.355, 938.357, or 938.365, Stats., that terminates under s. 48.355 (4) (b) or 938.355 (4) (am), Stats., after the person attains 18 years of age, or a substantially similar ~~Wisconsin~~ tribal law court order.

**(14)** (b) A determination made before January 1, 2015, that a person has abused or neglected a child under s. 48.981 (3) (c) 4., ~~2013~~ Stats., if the determination has not been reversed or modified on appeal.

**SECTION 62. DCF 58.02 (23g), (23r), and (24m) are created to read:**

**DCF 58.02 (23g)** “Tribal court order” means an order of a tribal court located in Wisconsin.

**(23r)** “Tribal private guardianship order” means a guardianship order of a tribal court that is granted under a tribal law that is substantially similar to s. 48.9795, Stats.

**(24m)** “Voluntary placement agreement” means an agreement under s. 48.63 (1) (a) or (b) or (5) (b), Stats., or a substantially similar tribal law of a tribe located in Wisconsin.

**SECTION 63. DCF 58.02 (25) is amended to read:**

**DCF 58.02 (25)** “Voluntary transition-to-independent-living agreement” means a voluntary agreement under s. 48.366 (3) or 938.366 (3), Stats., or a substantially similar tribal law of a tribe located in Wisconsin.

**SECTION 64. DCF 58.03 (2) and (3) are amended to read:**

**DCF 58.03 (2) VOLUNTARY.** A relative applying for or receiving kinship care payments on behalf of a child residing with the relative for a child that was not placed in the relative caregiver's home under a court order or a voluntary transition-to-independent-living agreement and is not under the placement and care responsibility of a child welfare agency. The child's living arrangement with the relative may be informal or the relative may be the child's guardian under s. 48.9795, Stats., or a tribal private guardianship order.

**(3) GUARDIAN APPOINTED FOR CHILD IN NEED OF PROTECTION OR SERVICES.** A relative that is applying for or receiving long-term kinship care payments and is a child's guardian under s. 48.977, Stats., or a tribal court order that is substantially similar to an order under s. 48.977, Stats.

**SECTION 65. DCF 58.04 (1) (b) (Note) is amended to read:**

**DCF 58.04 (1) (b) Note:** If a relative caregiver has a private guardianship of the child under s. 48.9795, Stats., or a tribal private guardianship order, a child welfare agency does not have placement and care responsibility for the child, unless there is another court order giving the child welfare agency placement and care responsibility.

**SECTION 66. DCF 58.05 (5) (a), (b), and (c) are amended to read:**

**DCF 58.05 (5) (a)** If the criminal history records indicate a charge of a crime specified in s. 48.57 (3p) (g), Stats., or comparable law in another ~~state~~ jurisdiction, but do not completely and clearly indicate the final disposition of the charge, the kinship care agency shall make every reasonable effort to contact the clerk of courts to determine the final disposition of the charge.

**(b)** If the background information disclosure indicates a charge or conviction of a crime specified in s. 48.57 (3p) (g), Stats., or comparable law in another ~~state~~ jurisdiction, but the criminal history records do not include the charge or conviction, the agency shall make every

reasonable effort to contact the clerk of courts to obtain a copy of the criminal complaint and the final disposition of the complaint.

(c) If the results of the criminal history records, the background information disclosure, or any other information indicate a conviction for a violation of s. 940.19 (1), 940.195, 940.20, 941.30, 942.08, 947.01 (1), or 947.013, Stats., or comparable law in another state jurisdiction, not more than 5 years before the kinship care agency obtained the information, the agency shall make every reasonable effort to contact the clerk of courts to obtain a copy of the criminal complaint and judgment of conviction relating to that violation.

**SECTION 67. DCF 58.06 (2) (e) and (6) (b) are amended to read:**

**DCF 58.06 (2) (e)** The ability and willingness to work with the child's parents, if the relative caregiver is applying for or receiving voluntary kinship care and does not have guardianship of the child under s. 48.9795, Stats., or a tribal private guardianship order.

**(6) (b) Parental consent.** The kinship care agency determines that the child's custodial parent or parents have consented to the child living with the relative caregiver, except that no consent is required if the relative caregiver has guardianship of the child under s. 48.9795, Stats., or a tribal private guardianship order.

**SECTION 68. DCF 58.07 (1) (a) and (2) are amended to read:**

**DCF 58.07 (1) (a) Court order.** The child has been placed with the relative caregiver by a court order under s. 48.13 or 938.13, Stats., or a substantially similar ~~Wisconsin~~ tribal law court order.

**(2) LONG-TERM KINSHIP CARE.** When determining the eligibility of a relative caregiver to receive long-term kinship care payments, the kinship care agency shall require the relative



caregiver to provide proof that the relative caregiver is the child's guardian under s. 48.977, Stats., or a tribal court order that is substantially similar to an order under s. 48.977, Stats.

**SECTION 69. DCF 58.08 (4) (a) 3. a. and (b) 2., (5) (b) 1., 2., and (Note), (9) (b) 1., (11)**

**(a) 1. d., (13), and (14) (Note) are amended to read:**

**DCF 58.08 (4) (a) 3. a.** Child abuse or neglect investigations or final substantiated findings in ~~each county~~ any jurisdiction in Wisconsin in which the relative caregiver, adult residents, prospective adult residents, employees, and prospective employees reside or have resided within the previous 5 years.

(b) 2. 'Express denial.' The kinship care agency shall determine that a relative caregiver is ineligible to receive voluntary kinship care and contact the local child protective services agency if the relative caregiver does not have guardianship of the child under s. 48.9795, Stats., or a tribal private guardianship order, and a custodial parent expressly denies consent for the child to live with the relative caregiver.

(5) (b) 1. 'Guardian; not in best interests.' If a kinship care agency has concerns about whether it continues to be in a child's best interests to live with a relative caregiver that has been appointed the child's guardian under s. 48.977, Stats., or a tribal court order that is substantially similar to an order under s. 48.977, Stats., or under s. 48.9795, Stats., or a tribal private guardianship order, the kinship care agency shall inform the court that appointed the guardianship.

2. 'Parent in home; long-term kinship care.' If a child's parent resides with the child and the relative caregiver that is the child's guardian under s. 48.977, Stats., or a tribal court order that is substantially similar to an order under s. 48.977, Stats., for more than 30 days, the kinship care agency shall inform the court that appointed the guardianship.

**Note:** Guardianships under s. 48.977, Stats., or a tribal court order that is substantially similar to an order under s. 48.977, Stats., are the result of a previous action under ch. 48, Stats., or substantially similar tribal law, in which child safety may have been an issue. Therefore, it is imperative that the kinship care agency responds accordingly when the agency becomes aware of a situation that circumvents the guardianship.

(9) (b) 1. The date the relative caregiver was appointed to be the child's guardian under s. 48.977, Stats., or a tribal court order that is substantially similar to an order under s. 48.977, Stats.

(11) (a) 1. d. If the child is under the guardianship of the relative caregiver by a statutory provision other than s. 48.977, Stats., or a tribal court order that is substantially similar to an order under s. 48.977, Stats.

(13) LONG-TERM KINSHIP CARE AGREEMENT. A kinship care agency that determines that a relative caregiver is eligible to receive long-term kinship care payments shall enter into a written agreement with the relative caregiver using a form prescribed by the department. Under the written agreement, the relative caregiver agrees to provide care and maintenance for the child and the kinship care agency agrees to provide long-term kinship care payments to the relative caregiver until the date of a change in circumstances specified in s. 48.57 (3n) (am) 6., Stats., or the date on which the long-term guardianship under a tribal court order that is substantially similar to an order under s. 48.977, Stats., terminates.

(14) **Note:** For other provisions affecting a change in the type of relative caregiving, see s. DCF 58.06 (1) (c) 2. and sub. (10) (a) 3.

There are only minor differences in the eligibility criteria for kinship care and long-term kinship care. If a relative caregiver receiving kinship care payments is appointed the child's guardian under s. 48.977, Stats., or a tribal court order that is substantially similar to an order under s. 48.977, Stats., the kinship care agency and relative caregiver will enter an agreement under sub. (13) and the kinship care agency will update the program type to long-term kinship care.

**SECTION 70. DCF 58.10 (1) (a) 13., 15., and 16. and (2) (b) 2. are amended to read:**

**DCF 58.10 (1) (a) 13.** The child is placed outside the relative caregiver's home under a court order, voluntary placement agreement ~~under s. 48.63 (1) (a) or (b) or (5) (b), Stats.,~~ or a voluntary transition-to-independent-living agreement.

15. The relative caregiver is appointed the child's guardian under s. 48.977, Stats., or a tribal court order that is substantially similar to an order under s. 48.977, Stats.

16. The relative caregiver's guardianship order under s. 48.977, Stats., or a tribal court order that is substantially similar to an order under s. 48.977, Stats., terminates.

(2) (b) 2. The child's parent is subject to an order for adult protective services or protective placement under s. 55.12, Stats., or a substantially similar tribal law.

**SECTION 71. DCF 58.12 (1) (a) is amended to read:**

**DCF 58.12 (1) (a)** "Emotional harm" means that the child or relative caregiver is emotionally impaired to an extent that substantially affects ~~his or her~~ the child's or relative caregiver's functioning.

**SECTION 72. DCF 59.02 (6g) and (6m) are amended to read:**

**DCF 59.02 (6g)** "Nonsecure" means a child is not held or prevented from leaving against ~~his or her~~ the child's will.

**(6m)** "Normalcy" means the ability to easily engage in healthy and age or developmentally appropriate activities that promote ~~his or her~~ well-being, such as participation in social, scholastic, and enrichment activities.

**SECTION 73. DCF 59.04 (1) (d) 2. is amended to read:**

**DCF 59.04 (1) (d) 2.** Each shelter care worker, hold-over room attendant, or trained person on the premises under subd. 1. shall ~~update his or her knowledge about first aid by~~ successfully

~~completing~~ complete a first aid course acceptable to the department at least once in each consecutive 3-year period.

**SECTION 74. DCF 59.04 (6) (a) 4., (b) 7., and (c) 2. and (Note) are repealed and recreated to read:**

**DCF 59.04 (6) (a) 4.** A report on references and the background check information specified in par. (c).

(b) 7. A report on references and the background check information specified in par. (c).

(c) 2. A completed and current background information disclosure on a form prescribed by the department.

**Note:** DCF-F-2978-E, *Background Information Disclosure*, is available in the forms section of the department's website at <http://dcf.wisconsin.gov> or by writing or calling any field office listed in Appendix A.

**SECTION 75. DCF 59.05 (3) (a) 4. is amended to read:**

**DCF 59.05 (3) (a) 4.** Names of staff and their work schedules covering the weekend along with indoor and outdoor activities planned for the child during ~~his or her~~ the child's weekend stay.

**SECTION 76. EFFECTIVE DATE.** This rule shall take effect on the first day of the month following publication in the Administrative Register, as provided in s. 227.22 (2) (intro.), Stats.