



**State of Wisconsin  
Department of Children and Families**

**DCF Rule Suspensions and Modifications Related to COVID-19**

**DCF 52, 54, 56, 57, 59, 152, and 202**

**Emergency Rules**

The Wisconsin Department of Children and Families orders the *repeal* of ss. DCF 52.12 (1) (c) 2. and 3., 152.06 (2) and (3), 202.04 (3) (b) 9. c., and 202.04 (3) (c) 5.; the *renumbering* of s. DCF 57.26; the *amendment* of s. DCF 59.01 (4); and the *creation* of ss. DCF 52.12 (3) (bm), 52.21 (8) (am), 52.45 (1) (bm), 54.04 (2) (cm), 56.055 (2m), 56.09 (4) (am), 57.15 (2) (am), 57.19 (7m), 57.26 (2), and 59.04 (6) (cm), relating to DCF rule suspensions and modifications related to COVID-19.

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These emergency rules were approved by the governor on May 16, 2020.

The statement of scope for these rules, SS 028-20, was approved by the governor on April 30, 2020, published in Register 773A1, on May 4, 2020, and approved by Secretary Emilie Amundson on May 14, 2020.

**Finding of Emergency**

The COVID-19 pandemic is endangering the health and safety of Wisconsin residents and causing significant economic disruption throughout the state. The department's emergency rules are necessary to protect the health, safety, and welfare of Wisconsin residents for the following reasons:

- To facilitate the placement and care of children in out-of-home care by allowing flexibility with respect to a limited set of requirements that present challenges due to COVID-19.
- To ensure the health and safety of local agency child care certification workers and certified child care providers and to enable continuity of care for children in certified child care.
- To provide relief to child support obligors who through no fault of their own may have lost their employment and are unable to comply with court-ordered child support obligations.

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

**Statutory authority:** Sections 48.651 (1d), 48.67 (intro.), 48.685 (9), 49.858 (2) (c), and 227.11 (2) (a), Stats.

**Statutes interpreted:** Sections 48.651, 48.625, 48.67, 48.685, 48.858

### **Explanation of Agency Authority**

Section 48.651 (1d), Stats., provides that the department shall promulgate rules establishing standards for the certification of child care providers.

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, including child welfare agencies' operation of residential care centers; 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 this section. The section provides requirements for criminal history and child abuse record searches.

Section 49.858 (2) (c), Stats., directs the department to specify the level of support that is overdue before an individual is considered to be delinquent in the payment of support for purposes of the administrative support enforcement.

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.

### **Related Statute**

Section 323.265, Stats., as created by 2019 Wisconsin Act 185, authorizes the tolling of certain deadlines and the suspension of training requirements associated with any program administered or enforced by a state governmental body or local governmental unit during an emergency period that ends on June 10, 2020.

### **Summary of the Rules**

#### ***Child Welfare***

The emergency rules make the following changes to the department's child welfare licensing rules:

- Allow flexibility with the deadlines for completion of certain initial and ongoing physical and dental examinations for children in foster homes, group homes, and residential care centers and for children accepted for placement by a licensed child-placing agency if it is not feasible to comply with the deadlines in the rules for a reason related to COVID-19. (Chapters DCF 52, 54, 56, and 57)

- Suspend the limits on the work schedules of resident care workers in residential care centers. (Chapter DCF 52)
- Allow the department to grant exceptions that authorize an increase in the number of days that a child may be placed in a shelter care facility. (Chapter DCF 59)
- Allow completion of fingerprint-based criminal background checks to be delayed for foster and adoptive parents and licensees and workers in group homes, residential care centers, and shelter care facilities if it is not currently feasible to complete them due to COVID-19. Name-based background checks will continue to be required and fingerprint-based criminal background checks will be completed as soon as it is feasible. (Chapters DCF 52, 56, 57, and 59)

### ***Child Care***

The department is suspending the provisions that require certification agency staff to conduct on-site visits of certified child care providers prior to granting recertification or prior to reopening after a temporary closure. (Chapter DCF 202)

### ***Child Support Lien Docket***

The department is suspending the provisions in ch. DCF 152 that establish a threshold for certifying a child support case for the lien docket. When the department certifies that a person obligated to pay support is eligible for the support lien docket under s. 49.854, Stats., an administrative lien arises by operation of law against the real and personal property in which the person has a recorded ownership interest. Certifying a child support debt for the lien docket and subsequent credit bureau reporting may have an adverse effect on the person's subsequent efforts to comply with their court order to pay support. Suspension of the threshold will prevent new child support debts from being certified to the lien docket.

### **Summary of Factual Data and Analytical Methodologies**

The department reviewed federal law, guidance issued by the Administration for Children and Families, relevant state statutes and current administrative rules, and expired and invalidated orders issued during the COVID-19 public health emergency to determine appropriate protections for the health and safety of local agency staff and clients and to allow flexibility for rule deadlines that may not be feasible due to the COVID-19 pandemic.

### **Summary of Public Comment on the Statement of Scope and the Department's Response**

*Comment:* Jim Sullivan, Director of Milwaukee County Child Support Services, disagrees with the department's proposed emergency rule prohibiting certification of new child support debts to the lien docket. Milwaukee County Child Support Services is not certifying debts to the lien docket now, but thinks it should be in the discretion of the local agency in the future. Prohibiting the certification of new debts to the lien docket defeats the purpose of the child support program.

*Department response:* Certification of child support debts to the lien docket subjects debtors to numerous additional enforcement mechanisms, including financial account seizure and license suspension, at a time when many payers are facing unemployment. Our child support agencies are working with these families to modify orders to reflect ability to pay and establish payment terms that take into consideration each family's circumstances without subjecting payers to additional

onerous enforcement actions. The purpose of the child support program is to provide financial support for children based on each parent's ability to pay. In order to focus our efforts on modifying orders to accurately reflect the payer's current ability to pay and limit enforcement to noncompliance with those orders, we need to suspend the threshold requirements for placement on the lien docket.

## **Summary of Related Federal Law**

### **Child Welfare**

Under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 USC 5121, *et seq.*, (Stafford Act), federal agencies that administer federal assistance programs may modify or waive administrative conditions of federal assistance programs under certain limited circumstances:

- There has been a declaration of a major disaster with respect to the applicable geographic area.
- The applicant state or local authorities have requested the modification or waiver.
- The modifications or waivers are with respect to administrative conditions for assistance as would otherwise prevent the giving of assistance under such programs if the inability to meet such conditions is a result of the major disaster (42 USC 5141).

The U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau, has identified the prohibition on Title IV-E federal financial participation if a fingerprint-based background check of a child welfare provider has not been completed as an administrative condition that it may modify under the Stafford Act authority, and it has chosen to exercise that authority. Thus, during the major disaster period, a Title IV-E agency that wishes to exercise this flexibility must do the following:

- Conduct all available name-based criminal background checks for prospective foster parents, adoptive parents, legal guardians, and adults working in a group home, shelter care facility, or residential care center.
- Complete the fingerprint-based checks of National Crime Information Database under 42 USC 671 (a) (20) (A), (C), and (D) as soon as it can safely do so, in situations where only name-based checks were completed.

On April 4, 2020, the President declared that a major disaster exists in Wisconsin related to the COVID-19 pandemic beginning on January 20, 2020, and continuing. The department is the Title IV-E agency for Wisconsin.

### **Child Support**

45 CFR 302.70 (a) (4) requires states to have procedures for the imposition of liens against the real and personal property of noncustodial parents who owe overdue support. The federal Office of Child Support Enforcement issued guidance for state child support programs regarding COVID-19 and specified that states have discretion on the imposition of liens.

### **Child Care**

Federal Child Care and Development Fund (CCDF) regulations at 45 CFR 98.41, regarding Health and Safety Requirements, require safety monitoring of all child care providers who receive CCDF subsidies. Related to this requirement, the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Child Care, has issued guidance allowing for

virtual visits of child provider sites during the COVID -19 pandemic. The suspension of the provisions that require agency staff to conduct on-site visits of certified child care providers prior to granting recertification or prior to reopening after a temporary closure is consistent with this federal guidance.

### **Comparison to Adjacent States**

#### **Minnesota**

The Minnesota Department of Human Services (DHS) has temporary authority to waive or modify requirements during the period of the peacetime emergency, which was recently extended to June 12, 2020, with the potential for further extensions. Pursuant to this authority, DHS's commissioner has modified background check requirements for applicants for foster care, adoption, and staff working in children's residential facilities, including waiver of the fingerprint-based background check requirement.

DHS has also modified requirements for foster children's physical exams and has made modifications to certain licensing requirements for children's residential facilities, including personnel requirements.

#### **Michigan**

Michigan DHHS guidance provides that if the conditional requirements of the law are met, facilities may hire and start new staff prior to getting the fingerprint results back as long as the new employee is fingerprinted within 10 days of their start date.

The state is not seeking rule changes regarding child support liens but is increasing the threshold delinquent child support amount before taking enforcement action.

Minnesota is temporarily suspending routine inspection of child care centers, issuing correction orders and other child care licensing actions, and temporarily suspending training timelines.

#### **Iowa**

Iowa DHS has indicated an intent to provide flexibility through guidance on its website that states that it "will consider waiving the requirement to receive federal fingerprint results back in advance of employment." The website also provides guidance to residential providers to "[r]eschedule all non-emergent medical and dental appointments."

The state is increasing the threshold delinquent child support amount before taking enforcement action.

#### **Illinois**

Illinois DCFS released a Q&A guidance that acknowledged that some programs may need to hire back-up staff due to staffing shortages but fell short of offering a waiver or rule suspension for background checks.

### **Effect on Small Businesses**

The rule will benefit small businesses as defined under s. 227.114 (1), Stats.

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

The rule allows flexibility with complying with deadlines if compliance is not feasible for a reason related to COVID-19.

**Agency Contact**

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**SECTION 1. DCF 52.12 (1) (c) 2. and 3. is repealed.**

**SECTION 2. DCF 52.12 (3) (bm) is created to read:**

**DCF 52.12 (3) (bm)** A center may hire or contract with a staff person before the department obtains a fingerprint-based check of the national crime information under s. 48.685 (2) (ba), Stats., of the staff person if all of the following conditions are met:

1. It is not feasible for the staff person to provide a set of fingerprints in the manner directed by the department for a reason related to COVID-19.

2. The center has obtained the information on the staff person required under s. 48.685 (2) (b), Stats.

3. Under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, the federal department of health and human services will allow federal reimbursement under Title IV-E of the Social Security Act for a child placed in the center before the fingerprint-based check of the staff person is completed.

(b) The staff person shall submit a set of fingerprints in the manner directed by the department as soon as it is feasible.

**SECTION 3. DCF 52.21 (8) (am) is created to read:**

**DCF 52.21 (8) (am)** Notwithstanding the deadlines specified in par. (a) (intro.) and 2., a center may comply with par. (a) as soon as it is feasible if it is not feasible to comply by the specified deadlines for a reason related to COVID-19.

**SECTION 4. DCF 52.45 (1) (bm) is created to read:**

**DCF 52.45 (1) (bm)** Notwithstanding the deadlines and time periods specified under pars. (a) and (b), a center may comply with pars. (a) and (b) as soon as it is feasible if it is not feasible to comply with the deadlines and time periods for a reason related to COVID-19.

**SECTION 5. DCF 54.04 (2) (cm) is created to read:**

**DCF 54.04 (2) (cm)** Notwithstanding the deadline in par. (c) (intro.), a child may have a physical examination as soon as it is feasible if it is not feasible to comply with the deadline in par. (c) (intro.) for a reason related to COVID-19.

**SECTION 6. DCF 56.055 (2m) is created to read:**

**DCF 56.055 (2m)** (a) Notwithstanding sub. (1) (b), a licensing agency may issue a license to operate a foster home to an applicant before the applicant provides the licensing agency or its designated agent with a set of fingerprints sufficiently clear to submit to the Wisconsin department of justice or other law enforcement agency for submission to the national crime information database as provided in s. 48.685 (2) (c) 1., Stats., if all of the following conditions are met:

1. It is not feasible for the applicant to provide a set of fingerprints under sub. (1) (b) for a reason related to COVID-19.

2. The licensing agency has obtained the information on the applicant required under sub. (2) (a).

3. Under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, the federal department of health and human services will allow federal reimbursement under Title IV-E of the Social Security Act for a child placed in the applicant's home before the fingerprint-based check of the applicant is completed.

(b) The foster parent shall submit a set of fingerprints to the licensing agency under sub. (1) (b) as soon as it is feasible.

**SECTION 7. DCF 56.09 (4) (am) is created to read:**

**DCF 56.09 (4) (am)** Notwithstanding the deadlines and time periods specified under par. (a), a foster parent may comply with par. (a) as soon as it is feasible if it is not feasible to comply with the specified deadlines and time periods for a reason related to COVID-19.



**SECTION 8. DCF 57.15 (2) (am) is created to read:**

**DCF 57.15 (2) (am)** Notwithstanding par. (a), a licensee may hire a staff member and the staff member may begin employment before the department obtains a fingerprint-based check of the national crime information databases under s. 48.685 (2) (ba), Stats., on the staff member if all of the following conditions are met:

1. It is not feasible for the staff member to provide a set of fingerprints in the manner directed by the department for a reason related to COVID-19.

2. The licensee has obtained the information on the staff member required under s. 48.685 (2) (b), Stats.

3. Under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, the federal department of health and human services will allow federal reimbursement under Title IV-E of the Social Security Act for a child placed in the group home before the fingerprint-based check of the staff member is completed.

(b) The staff member shall submit a set of fingerprints in the manner directed by the department as soon as it is feasible.

**SECTION 9. DCF 57.19 (7m) is created to read:**

**DCF 57.19 (7m)** Notwithstanding the deadline in sub. (7), a group home may ensure that a resident who is required to have a health examination under sub. (7) receives the health examination as soon as it is feasible if it is not feasible to comply within by the deadline for a reason related to COVID-19.

**SECTION 10. DCF 57.26 is renumbered DCF 57.26 (1).**

**SECTION 11. DCF 57.26 (2) is created to read:**

**DCF 57.26 (2)** Notwithstanding the deadlines and time periods under sub. (1), a resident may receive the required dental care as soon as it is feasible if it is not feasible to comply with the deadlines and time periods under sub. (1) for a reason related to COVID-19.

**SECTION 12. DCF 59.01 (4) is amended to read:**

**DCF 59.01 (4) EXCEPTION TO RULES.** The department may make exceptions to any of the rules for licensing shelter care facilities when the department is assured that granting such exceptions is not detrimental to the health, safety and welfare of children in shelter care, except that exceptions may not be made to s. DCF 59.03 (2) (b) or to s. DCF 59.05 (2) ~~or (3)~~.

**SECTION 13. DCF 59.04 (6) (cm) is created to read:**

**DCF 59.04 (6) (cm)** A licensee may hire a shelter care worker, hold-over room attendant, or relief help before the department obtains a fingerprint-based check of the national crime information databases under s. 48.685 (2) (ba), Stats., on the shelter care worker, hold-over room attendant, or relief help if all of the following conditions are met:

1. It is not feasible for the shelter care worker, hold-over room attendant, or relief help to provide a set of fingerprints in the manner directed by the department for a reason related to COVID-19.

2. The licensee has obtained the information on the shelter care worker, hold-over room attendant, or relief help required under s. 48.685 (2) (b), Stats.

3. Under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, the federal department of health and human services will allow federal reimbursement under Title IV-E of the Social Security Act for a child placed in the shelter care facility before the fingerprint-based check of the shelter care worker, hold-over room attendant, or relief help is completed.

(b) The shelter care worker, hold-over room attendant, or relief help shall submit a set of fingerprints in the manner directed by the department as soon as it is feasible.

**SECTION 14. DCF 152.06 (2) and (3) is repealed.**

**SECTION 15. DCF 202.04 (3) (b) 9. c. is repealed.**

**SECTION 16. DCF 202.04 (3) (c) 5. is repealed.**

**SECTION 17. EFFECTIVE DATE.** This rule shall take effect upon publication in the official state newspaper as provided in s. 227.24 (1) (c), Stats.