Response to Comments by Legislative Council Staff

Caregiver Background Checks

DCF 12, 50, 51, 55, and 56
CR16-014

All comments were accepted or rendered moot by revisions, except the following:

Comment 2.c.

Department response: The definition of "serious crime" in s. DCF 12.02 (24) will implement the department's new interpretation of s. 48.685 (5) (bm) 4. and (br) 6. and 7., Stats. In the past, these provisions have been interpreted to result in a 5-year bar to eligibility with no requirement to demonstrate rehabilitation when the 5-year period is over. The department no longer thinks that interpretation is correct. The revised interpretation in s. DCF 12.02 (24) will apply to new applicants for regulatory approval, employment, and nonclient residency beginning on the effective date of the rule.

Section DCF 12.02 (24) also clarifies that the offenses in s. 48.685 (5) (bm), Stats., are "serious crimes."

Comment 2.d.

Department response: The phrase "under the control of the entity" only appears in the definition of caregiver at s. DCF 12.02 (4) (b) 1. Section DCF 12.02 (26) is the most appropriate place for the definition of this term.

Comment 2.e.

Department response: "Vocational school" and "technical college" do not have the same meaning.

Comment 2.g.

Department response: The subdivision paragraph format helps the primary users of the rule see that the information in s. DCF 12.09 (1) (a) 3. b. does not apply to them. Subdivision paragraph 3. b. only applies to organizations that facilitate delegations of the care and custody of children under s. 48.979, Stats., as created by 2011 Wisconsin Act 8. Section DCF 12.09 (1) (a) 3. a. applies to the overwhelming majority of persons affected by the rule.

Comment 2.k.

Department response: The department does not agree that "person" should be changed to "adoptive parent" in ss. DCF 55.13 (4) (d) and 56.055 (4) (b).

The department prefers to leave the current language on a final substantiated finding as it is to assist agencies, foster parents, and applicants with understanding the requirements of the rule, even if the language duplicates information in the definition.

Comment 4.a.

Department response: The suggestion to include a cross-reference to s. 48.685 (6), Stats., in s. DCF 12.04 (2) (b) (intro.) is not appropriate. The introductory paragraph is about when the background search must be conducted. Section 48.685 (6), Stats., is about when a background information disclosure is required. The cross-reference to s. 48.685 (6), Stats., is appropriate where it is in s. DCF 12.04 (2) (b) 1., which is the provision on background information disclosures.

Comment 4.b.

Department response: The s. DCF 12.07 requirement to report ineligibility for regulatory approval, employment, contract, or nonclient residency under s. 48.685 (4m), Stats., mirrors statutory requirements. Sections 48.623 (6) (am) 2. and (bm) 5., 48.651 (2m), 48.75 (1m), and 120.13 (14) (a), Stats., require denials under s. 48.685 (4m), Stats., to be reported to the Department of Health Services. Section 48.685 (2) (am) 5. and (b) 1. e., Stats., requires a check of records of previous caregiver background check ineligibility for regulatory approval, employment, contract, or nonclient residency based on s. 48.685 (4m), Stats. Ineligibility based on s. 48.685 (5m), Stats., is not included in these provisions.

Comment 5.a.

Department response: Child care entities are not included in s. DCF 12.03 (2) because under s. 48.685 (6), Stats., background information disclosures are only required for child care entities before the initial regulatory approval, employment, contract, or nonclient residency. Out-of-date background information disclosures are most likely to be an issue when entities are required to obtain new background information disclosures from existing employees and contractors every 4 years under s. 48.685 (6) (am), Stats.

Comment 5.b.

Department response: Department standards are not necessary because access to much of the information is limited by state and federal statutes.

Comment 5.d.

Department response: The department does not agree. The suggested language is not appropriate when the provision is applied to persons who have, or are seeking, employment or contract. Employees and contractors are not approved.

Section DCF 12.06 (2) (intro.) and (3) are correct as they are. Agencies conduct caregiver background checks on persons who have, or are seeking, nonclient residency; entities do not.

Comment 5.e.

Department response: Section DCF 12.08 (3) is correctly limited to caregivers under s. DCF 12.02 (4) (b). Section DCF 12.08 (1) applies to caregivers under s. DCF 12.02 (4) (a). Section DCF 12.08 does not apply to caregivers under s. DCF 12.02 (4) (c) because most aspects of the delegation of care and custody of a child under s. 48.979, Stats., are unregulated.

Comment 5.g.

Department response: The suggested information is provided in department-prescribed forms. The department does not agree that this level of procedural detail is required to be in administrative rule.

The agency decision on whether to accept a previous rehabilitation approval is discretionary. If an agency decides it is appropriate to accept a previous rehabilitation approval, they will not have to conduct their own rehabilitation review. If the agency does not accept a previous rehabilitation approval, s. DCF 12.16 (3) provides that "the agency shall inform the person of his or her 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."

Comment 5.j.

Department response: Appeal rights are not available when a rehabilitation review panel issues an approval. A person who receives an approval with conditions or limitations may request another rehabilitation review one year after the approval and request that the conditions or limitations be removed.

Comment 5.l.

Department response: The agency decision on whether to accept a previous rehabilitation approval is discretionary. If an agency decides it is appropriate to accept a previous rehabilitation approval, they will not have to conduct their own rehabilitation review.