

Chapter DCF 202

CHILD CARE CERTIFICATION

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Note: Sections HFS 55.55 to 55.62 were renumbered to ss. DWD 55.01 to 55.09, Register, July, 1999, No. 523, eff. 8–1–99. Chapter DWD 55 was renumbered to chapter DCF 202 under s. 13.92 (4) (b) 1., Stats., Register November 2008 No. 635.

DCF 202.01 Authority, purpose, applicability, and exceptions. (1) **AUTHORITY AND PURPOSE.** This chapter is promulgated under the authority of s. 48.651 (1d), Stats., to establish standards for the certification of persons who provide child care for 1 to 3 children. The standards are intended to protect and promote the health, safety, and welfare of children in the care of these providers.

(2) **APPLICABILITY.** Subject to sub. (3), this chapter applies to certification agencies, applicants for certification, and certified child care operators who are not licensed to operate a family child care center under ch. DCF 250 and are not required to be licensed as a child care center under s. 48.65, Stats. Certification agencies and certified child care operators shall comply with all applicable laws and the requirements of this chapter.

(3) **EXCEPTIONS.** (a) A certified child care operator may submit to the certification agency a written request for an exception to a requirement of this chapter with a justification for the requested action and an alternative to meet the intent of the requirement.

(b) A certification agency may grant a request for an exception submitted under par. (a) if a certified child care operator demonstrates to the satisfaction of the certification agency that granting the exception will not jeopardize the health, safety, or welfare of any child in care. A certification agency may not grant an exception to a statutory requirement.

History: Cr. Register, August, 1985, No. 356, eff. 9–1–85; emerg. r. and recr. eff. 7–1–96; emerg. r. and recr., eff. 7–1–96; r. and recr. Register, February, 1997, No. 494, eff. 3–1–97; renum. from HFS 55.55, Register, July, 1999, No. 523, eff. 8–1–99; CR 07–071: am. (1) and (2) Register May 2008 No. 629, eff. 6–1–08; 2015 Wis. Act 132: am. (2) Register February 2016 No. 722, eff. 3–1–16; EmR1918: emerg. r. and recr., eff. 1–30–19; CR 19–089: r. and recr. Register March 2020 No. 771, eff. 4–1–20.

DCF 202.02 Definitions. In this chapter:

(1) “Background check request form” means a form prescribed by the department on which a person completes required information for the child care background check under s. 48.686, Stats., and ch. DCF 13.

Note: Form DCF–F–5296, *Background Check Request*, is available on the department’s website at <https://dcf.wisconsin.gov/cclicensing/ccformspubs>.

(1s) “Certification agency” means the department in a county having a population of 750,000 or more; a county department of social services established under s. 46.22, Stats.; a county department of human services established under s. 46.23, Stats.; a tribal agency; or any agency that contracts with any of those entities to certify child care operators under s. 48.651, Stats.

(2) “Certified child care home” or “home” means the residence in which a certified child care operator provides care of children and which meets the standards under s. DCF 202.08.

(3) “Certified child care operator,” “child care operator,” or “operator” means an individual that has legal and financial responsibility for the operation of a child care program and for meeting the requirements under this chapter. “Certified child care operator,” “child care operator,” or “operator” includes a corporation, partnership, limited liability company, non-incorporated association, or cooperative that is certified on September 30,

2019, until the operator’s current 2–year certification period ends under s. DCF 202.04 (5).

Note: Sub. (3) is amended eff. 10–1–21 by CR 19–089 to read:

(3) “Certified child care operator,” “child care operator,” or “operator” means an individual that has legal and financial responsibility for the operation of a child care program and for meeting the requirements under this chapter.

(3b) “Certified family child care operator” means a certified child care operator who provides care in a private residential property that is not the home of the child in care.

(3e) “Certified in-home child care operator” means a certified child care operator who provides care in the child’s home for a family that is eligible for in-home care through the child care subsidy program under s. DCF 201.039 (5).

(3g) “Child care background check” means the requirements in s. 48.686, Stats., and ch. DCF 13.

(3h) “Child care certification worker” means a person employed by a certification agency whose duties include determination of eligibility for child care certification.

(3k) “Child care provider” or “provider” means a certified child care operator or an employee or volunteer of the child care operator who is involved in the care and supervision of children on behalf of the operator and who meets the requirements specified in s. DCF 202.08 (1). “Provider” includes a substitute if there is no regularly scheduled provider working other than the substitute.

(3L) “Child care subsidy program” means the program under which the department issues payments to assist parents who are eligible under s. 49.155 (1m), Stats., with child care expenses.

(3m) “Complaint” means an alleged violation of this chapter, ch. DCF 13, or s. 48.686, Stats.

(4) “County department” means a county department of social services under s. 46.22, Stats., or a county department of human services under s. 46.23, Stats.

(5) “Department” means the Wisconsin department of children and families.

(5c) “Early childhood education” means the teaching of children who are 8 years of age or less.

(5g) “Emergency” means unforeseen circumstances that require immediate attention.

(5m) “Emergency back-up provider” means a designated adult who is available to assist in the event an emergency occurs that requires a provider to leave the premises occasionally for a short period of time.

(5r) “Employee” means any individual who works for a certified child care operator to provide care and supervision of children in care, including a substitute, helper, or assistant.

(6) “Family child care center” means a child care center licensed under s. 48.65, Stats., and ch. DCF 250.

(7) “Field trip” means any experience a child has away from the premises while in the care of a provider, whether the child walks or is transported.

(7m) “Fit and qualified” means displaying the capacity to successfully nurture and care for children and may include consideration of any of the following:

- (a) Results of the child care background check.
- (b) Abuse of alcohol or drugs.

(c) A history of criminal, civil or other offenses, or administrative rule violations that are related to the care of children or clients or demonstrate an inability to manage the activities of a child care program.

(d) Exercise of unsound judgment.

(e) Compliance with the standards under this chapter.

(8) “Group child care center” means a child care center licensed under s. 48.65, Stats., and ch. DCF 251.

(8m) “Hazard” means a potential source of harm, including a recalled product, that could jeopardize the health, safety, or well-being of children in care.

(9) “Health check provider” means a provider of health assessment and evaluation services eligible to be certified under s. DHS 105.37 (1) (a), including an outpatient hospital facility, health maintenance organization, visiting nurse association, clinic operated under a physician’s supervision, local public health agency, home health agency, rural health clinic, Indian health agency and neighborhood health center.

(9d) “Household member” means a person who is age 10 or older, who resides, or is expected to reside, at a certified child care home and who is not a client of the certified child care operator.

(9g) “In care” means a child care provider is responsible for the supervision, safety and developmental needs of children, on or off the premises, including during transportation provided by the certified child care operator. For purposes of this subsection, “children” includes children under 7 years of age who reside in the certified child care home.

(9r) “Inclement weather” means stormy or severe weather, including any of the following:

(a) Heavy rain.

(b) Temperatures above 90 degrees Fahrenheit.

(c) Wind chills of 0 degrees Fahrenheit or below for children age 2 and above.

(d) Wind chills of 20 degrees Fahrenheit or below for children under age 2.

(10) “Infant” means a child under one year of age.

(11) “In-home provider” means a person caring for a child in the child’s own home when the conditions in s. DCF 201.039 (5) are met.

(12) “Licensed physician” means a physician licensed under ch. 448, Stats.

(12m) “Operator’s own children” means a certified family child care operator’s natural, adopted, step, and foster children, and any children who reside in the operator’s home.

(13) “Parent” means a “parent,” as defined under s. 48.02 (13), Stats., or a “guardian,” as defined under s. 48.02 (8), Stats.

Note: Section 49.155 (1) (c), Stats., provides: “*Notwithstanding s. 49.141 (1) (j), ‘parent’ means a custodial parent, foster parent, treatment foster parent, legal custodian or person acting in place of a parent.*”

(14) “Physician assistant” means a health care professional certified under s. 448.04 (1) (f), Stats., and ch. Med 8.

(15) “Premises” means the tract of land on which the home used for child care is located, including all buildings and structures on that land.

(18) “Related to the provider” means the provider’s natural or adopted children, foster children, stepchildren, grandchildren, brothers, sisters, first cousins, nephews, nieces, uncles and aunts.

(19) “School-age child” means a child 5 years of age or older who is enrolled in a public school or a parochial or other private school.

(20c) “Shaken baby syndrome” or “SBS” means a severe form of brain injury that occurs when an infant or young child is shaken forcibly enough to cause the brain to rebound against his or her skull.

(20g) “Substitute” means a provider who replaces the certified child care operator or other provider on an infrequent, pre-arranged, or planned basis.

(20n) “Sudden infant death syndrome” or “SIDS” means the sudden death of an infant under one year of age that remains unexplained after a thorough case investigation, including performance of a complete autopsy, examination of the death scene, and a review of the clinical history.

(20r) “Supervision” means guidance of the behavior and activities of children for their health, safety, and well-being by a provider who is within sight or sound of the children, except as specified in s. DCF 202.08 (2) (e) 6. and 7.

(20w) “Suspension” means a temporary interruption in regulatory approval.

(21) “Tribe” means a Wisconsin American Indian tribe recognized by the federal government.

(21m) “Universal precautions” means measures taken to prevent transmission of infection from contact with blood or other potentially infectious material, as recommended by the U.S. public health service’s centers for disease control and adopted by the U.S. occupational safety and health administration as 29 CFR 1910.1030.

Note: “Standard precautions” for infection control measures incorporate universal precautions. Information on the OSHA requirements related to standard or universal precautions is available on the OSHA website at <http://www.osha.gov>.

(22) “Volunteer” means a person who is not paid but who agrees to give time, with or without reimbursement for expenses, to transport children in care or to work in a certified child care home.

(23) “Wading pool” means a shallow pool, with sides of 15 inches or less in height, capable of being dumped to change water, and used primarily for small children.

History: Cr. Register, August, 1985, No. 356, eff. 9–1–85; r. and recr. Register, December, 1991, No. 432, eff. 1–1–92; emerg. r. and recr. eff. 7–1–96; r. and recr. Register, February, 1997, No. 494, eff. 3–1–97; renum. from HFS 55.56; r. and recr. (1) and am. (4) and (22), Register, July, 1999, No. 523, eff. 8–1–99; correction in (6) and (13) made under s. 13.93 (2m) (b) 7., Stats., Register, July, 1999, No. 523; CR 02–007: am. (1) and (4), cr. (3m) and (4m) Register May 2002 No. 557, eff. 6–1–02; CR 07–071: cr. (1m), (3b), (3e), (3k), (5g), (5r), (8m), (9c), (9g), (9r), (12m), (20c) to (20w), r. and recr. (2), (15) and (22), am. (3), (6) and (8), renum. (4m) and (20) to be (3h) and (3f) and am., r. (7) and (17) Register May 2008 No. 629, eff. 6–1–08; corrections in (1m), (2), (3m), (5), (6), (8), (9) and (20r) made under s. 13.92 (4) (b) 6. and 7., Stats., Register November 2008 No. 635; 2015 Wis. Act 132: r. (1), cr. (1s), am. (2), (3h), r. (4), am. 14 Register February 2016 No. 722, eff. 3–1–16; correction in (1m) made under s. 13.92 (4) (b) 7., Stats., Register September 2016 No. 729; EmR1918: emerg. cr. (1), r. (1m), am. (2), (3), (3b), (3e), r. (3f), cr. (cg), am. (3h), (3k), cr. (3L), am. (3m), cr. (4), (5c), am. (5g), cr. (5m), (7), (7m), am. (8m), r. (9c), cr. (9d), am. (9g), (11), r. and recr. (13), r. (16), am. (19), (20c), (20g), (20n), (20r), (20w), (21), cr. (21m), am. (22), cr. (23), eff. 1–30–19; CR 19–089: cr. (1), r. (1m), am. (2), (3), (3b), (3e), r. (3f), cr. (cg), am. (3h), (3k), cr. (3L), am. (3m), cr. (4), (5c), am. (5g), cr. (5m), (7), (7m), am. (8m), r. (9c), cr. (9d), am. (9g), (11), r. and recr. (13), r. (16), am. (19), (20c), (20g), (20n), (20r), (20w), (21), cr. (21m), am. (22), cr. (23) Register March 2020 No. 771, eff. 4–1–20 except (3), eff. 4–1–20 and 10–1–21; correction in (9g) made under s. 13.92 (4) (b) 7., Stats., Register March 2020 No. 771.

DCF 202.04 Certification. (1) BASIS FOR CERTIFICATION.

In order to be certified, a child care operator shall meet all of the following conditions:

(a) The operator is exempt from the licensure requirement under s. 48.65, Stats.

(b) There is no child care center licensed under ch. DCF 250 on the premises where the certified child care operator cares, or will care, for children.

(c) The operator complies with the standards in this chapter.

(2) TYPES OF CERTIFIED OPERATORS. A certified child care operator may be certified as a certified family child care operator or a certified in-home child care operator. Certified family child care operators and certified in-home child care operators are required to meet the standards under this chapter and may care for infant, toddler, preschool, or school-age children consistent with s. DCF 202.08 (6).

(3) CERTIFICATION ADMINISTRATION. (a) The certification agency that is responsible for certifying an operator shall be determined by the geographic area in which the child care is provided.

(b) A certification agency shall do all of the following:

1. Ensure that each new child care certification worker completes the department–approved new certification worker training during the first 6 months of employment.

2. Maintain certification records demonstrating agency, applicant, and operator compliance with requirements under this chapter. Certification applicant and operator records shall be retained for 6 years after the closure of a certified child care program, an application denial, an application withdrawal, or a final appeal decision denying an application.

3. Provide to prospective applicants prior to initial certification a copy of the applicable requirements of this chapter and information on child care certification, including information on all of the following:

- a. Preservice training requirements.
- b. Reducing the incidence of sudden infant death syndrome.
- c. Preventing shaken baby syndrome and abusive head trauma.
- d. Child development, positive child guidance, and health and safety, including first–aid and nutrition.
- e. The child care subsidy program.
- f. The child care quality rating and improvement system.

4. a. Require an applicant for certification to submit a completed background check request form and to receive a final determination of eligibility prior to initial certification.

b. If an applicant is applying to be a certified family child care operator, require household members 10 years of age and older to submit a completed background check request form and to receive final determinations of eligibility prior to initial certification.

5. Require any potential household member of a certified family child care operator 10 years of age or older, and any potential provider, substitute, or employee to submit a completed background check request form and receive from the department a preliminary eligibility determination under s. 48.686 (4p), Stats., prior to residency, supervised employment, or volunteer work commencing.

6. When a current household member of a certified family child care operator turns 10 years of age, require the operator to submit a completed background check request form to the certification agency by the agency's next business day.

7. Follow the requirements for conducting child care background checks under s. 48.686, Stats., and ch. DCF 13.

8. Request a statement from the appropriate regulating agency indicating the regulating agency approves a child care business in the applicant's home if the applicant has a separate license or certification to care for children or adults, including foster care or adult care.

9. Conduct an on–site inspection of the premises where child care will be provided or is provided, including areas not used for child care, at all of the following times:

- a. Prior to initial certification.
- b. Not less than annually.
- c. Upon receiving an application for recertification.
- d. Upon receiving an application for a new location.

10. Conduct the annual inspection of all certified child care operators under subd. 9. b. as specified by the department to monitor for health and safety standards. The inspection of certified family child care operators shall be unannounced and during hours of operation. The inspection of certified in–home child care operators may be announced and does not have to be during hours of operation.

11. After initial certification is granted, document monitoring results in the manner prescribed by the department and issue a compliance statement or a noncompliance statement.

12. Do all of the following, if the operator provides transportation services:

a. Inspect a child vehicle safety alarm, at least annually, to determine whether the child safety alarm is in good working order as required under s. DCF 202.08 (9) (p) to (s).

b. Review the driving record of each driver of a vehicle used to transport children in care to ensure the driver has no accidents or traffic violations that would indicate that having children ride with the driver could pose a threat to the children. In determining whether a driver may pose a threat to children, the certification agency shall consider the totality of the driver's record and any other relevant facts under s. DCF 202.08 (9) (f).

Note: Information on how to obtain driving records may be obtained by contacting the Department of Transportation at (608) 261–2566 or <http://dot.wisconsin.gov/drivers/drivers/point/abstract.htm>.

13. Refuse to approve more than one certified family child care operator for each residence.

14. No later than the next business day, document in a manner prescribed by the department any reports of the death of a child in care, or any accident or incident that results in an injury to a child in care that requires professional medical evaluation.

(c) A certification agency may do any of the following:

1. Conduct additional on–site inspections to monitor compliance with certification standards, in addition to the required inspections under par. (b) 9.

2. Require an applicant for certification to submit references at initial certification.

3. Require an evaluation and written statement by a physician or licensed mental health professional of any person associated with the care of children or any household member if the certification agency has any reason to believe that the person's physical or mental health may endanger children in care. The certification agency shall document the reason it believes the person's physical or mental health may endanger children in care.

4. Impose conditions for approval of certification.

5. Enter into a temporary closure agreement with an operator that sets forth specific terms and conditions for the closure, not to exceed 365 days. An on–site monitoring visit must be conducted prior to reopening.

(4) APPLICATION. (a) *Form.* An application for initial certification, recertification, or relocation under this section shall be made on a form prescribed by the department, which is available from the certification agency in the county or tribal territory where the child care is provided. The applicant shall submit the completed form and any other material necessary to make a certification decision to the certification agency.

Note: Form DCF–F–DWSW48–E, *Certification Application – Family and In–Home Child Care Programs*, is available from a certification agency or on the department's website at <https://def.wisconsin.gov/index.php/cccertification/ccformspubs>.

(b) *Individual only.* An applicant for certification shall be an individual.

(bm) *Transition.* No corporation, partnership, limited liability company, non–incorporated association, or cooperative that is a certified child care operator may apply for recertification.

Note: Par. (bm) is repealed eff. 10–1–21 by CR 19–089.

(c) *Child care background check.* An applicant and certification agency shall comply with the background check requirements under s. 48.686, Stats., and ch. DCF 13.

(d) *Fees.* A certification agency may charge a fee for child care certification not to exceed 150 percent of the licensing fee for a family child care center that provides care and supervision for 4 to 8 children under s. 48.65 (3) (a), Stats. The department may charge a fee for the cost of conducting the child care background checks.

(e) *Approval.* Within 60 days after completion of a satisfactory determination that the applicant is fit and qualified and compliant with the standards in this chapter, the certification agency shall either approve the application and issue a certification under sub. (5) (a) or (b) or deny the application.

(5) **CATEGORIES OF CERTIFICATION.** Certification of an operator by a certification agency shall be provisional or regular as follows:

(a) *Provisional.* Provisional certification may be issued only after the child care operator has demonstrated compliance with all certification standards under this chapter, except training specified in s. DCF 202.08 (1) (b) 3. Provisional certification shall be granted for a period not to exceed 6 months and may not be renewed or extended.

(b) *Regular.* 1. Regular certification may be issued only after the child care operator has demonstrated compliance with all certification standards under this chapter, including requirements for completing department–approved preservice training under s. DCF 202.08 (1) (b) 3.

2. Regular certification shall be granted for a period of 2 years and may be renewed upon application for recertification. The two–year period includes a combination of provisional and regular certification.

History: Cr. Register, August, 1985, No. 356, eff. 9–1–85; am. (4) (b), Register, November, 1987, No. 383, eff. 12–1–87; renum. (5) to be (6), cr. (5), Register, December, 1991, No. 432, eff. 1–1–92; emerg. r. and recr. eff. 7–1–96; r. and recr. Register, February, 1997, No. 494, eff. 3–1–97; renum. from HFS 55.58, am. (2) (a) and (b), (3) (c), (d) 1. and 2., (5) (a) and (b), (7) (a) and (b) 1., and (8) and cr. (9), Register, July, 1999, No. 523, eff. 8–1–99; CR 02–007: am. (3) (b), (5) (a), (b), (7) (b) 2. c., d., and (9), r. (3) (f), cr. (6) (c), (7) (b) 2. h., and 3. d. Register May 2002 No. 557, eff. 6–1–02; CR 07–071: am. (1), (2), (5) (title), (a), (b), (7) (a), (b) 1., 2. a. to f., 3. a. to d. and (9), r. (3) (b) and (7) (b) 4., r. and recr. (3) (e) and (7) (b) 2. g., cr. (3) (f), (4) (b), (7) (b) 2. bm. and 3. e., renum. (4) to be (4) (a) and am. Register May 2008 No. 629, eff. 6–1–08; corrections in (2), (3) (d), (e) 2., (5), (7) (a), (b) 1., (8) and (9) made under s. 13.92 (4) (b) 6. and 7., Stats., Register November 2008 No. 635; 2015 Wis. Act 132: am. (3) (a), (d), (e) (intro.), (f), (4) (a), (b), (5) (intro.), (6) (a), (b), (c), (7) (a), (b) 1., 2. (intro.), 3. (intro.), e., (8), (9) Register February 2016 No. 722, eff. 3–1–16; CR 14–028: am. (7) (b) 2. d. Register July 2016 No. 727, eff. 8–1–16; corrections in (3) (e) 2. and (9) made under s. 13.92 (4) (b) 7., Stats., Register September 2016 No. 729; EmR1918: emerg. r. and recr., eff. 1–30–19; CR 19–089: r. and recr. Register March 2020 No. 771, eff. 4–1–20 except r. (4) (bm), eff. 10–1–21; correction in (3) (b) 5., 6., 12. b. made under s. 35.17, Stats., Register March 2020 No. 771.

DCF 202.06 Enforcement actions and conditions.

(1) A certification agency may deny, suspend, revoke, refuse to renew certification, issue a warning of enforcement, initiate other enforcement actions specified in this chapter, or place conditions on the certification if any of the following apply:

(a) The child care operator is not in compliance with this chapter, ch. DCF 13, s. 48.686, Stats., or conditions on the certification.

(b) The certification agency determines there is danger to the health, safety, or welfare of the children in care.

(c) The court, department, certification agency, or local agency that administers the child care subsidy program determines that a certified child care operator has done any of the following:

1. Misrepresented or withheld information.
2. Submitted false or misleading information.
3. Failed to comply with the terms of the child care subsidy program.

(d) The child care operator fails to cooperate with the department or certification agency.

(e) The applicant's license or certificate to care for children or adults has been denied or revoked.

(f) The child care operator or other provider denies the child care certification worker access to the premises or children's records to monitor compliance with the certification standards.

(g) The evaluation under s. DCF 202.04 (3) (c) 3. gives the certification agency reasonable concern that the person's physical or mental health may endanger children in care.

(h) The certification agency has determined the applicant or operator is not fit and qualified.

(2) A certification agency may not approve a child care certification or approve an employee, volunteer or other provider, if the

department determines that the applicant or operator, or other person subject to the child care background check is ineligible, unless the determination of ineligibility is overturned on appeal under s. 48.686 (4s), Stats.

(3) A certification agency shall suspend certification if the operator, or other individual subject to the child care background check, is the subject of a pending charge for a serious crime under s. 48.686 (1) (c), Stats.

(4) A certification agency shall require a child care operator to submit a new application for certification if the operator's previous certification was denied, revoked, or not renewed for a reason specified in this section.

(5) A certification agency may refuse to accept a new application for 2 years after the date of a denial, revocation, or refusal to renew the certification. An applicant may appeal the refusal decision as specified under sub. (6).

(6) (a) If a certification agency denies, suspends, revokes, or refuses to renew a certification, the certification agency shall notify the child care applicant or operator in writing and give reasons for the action.

(b) An action described in par. (a) may be appealed as follows:

1. An action of a county department may be appealed under ch. 68, Stats., which provides for administrative review of the decisions of local agencies.

2. An action of a tribal agency may be appealed to the tribal agency, which shall use an appeal process equivalent to the process in ch. 68, Stats.

3. In a county with a population of 750,000 or more, the certification agency's action may be appealed under ch. 227, Stats.

(7) If a certified child care operator violates the provisions of this chapter, ch. DCF 13, or s. 48.686, Stats., the certification agency shall document the violations and, if appropriate, require the operator to submit a plan of correction for violation in writing and may impose any or all of the following:

(a) Forbid the operator to enroll any new children until all violations have been corrected.

(b) Issue a warning of revocation or suspension in writing.

(c) Place conditions on the certification.

(d) Except as provided under sub. (3), suspend the operator's certification for not more than 60 days. The certification agency shall either reinstate or revoke the certification by the date that the suspension expires.

History: Cr. Register, August, 1985, No. 356, eff. 9–1–85; emerg. r. and recr. eff. 7–1–96; r. and recr. Register, February, 1997, No. 494, eff. 3–1–97; renum. from HFS 55.60, Register, July, 1999, No. 523, eff. 8–1–99; CR 02–007: renum. and am. DWD 55.06 to be (4), cr. (1) (d), (e), (g), (h), (2) and (3) Register May 2002 No. 557, eff. 6–1–02; CR 07–071: am. (1) (intro.), (a), (b), (d), (e), (g), (h) and (2) to (4), cr. (1) (i) and (j) Register May 2008 No. 629, eff. 6–1–08; corrections in (1) (a), (j), (2) and (3) made under s. 13.92 (4) (b) 7., Stats., Register November 2008 No. 635; 2015 Wis. Act 132: am. (1) (intro.), (c), (e), (j), (2), (4) Register February 2016 No. 722, eff. 3–1–16; EmR1918: emerg. r. and recr., eff. 1–30–19; CR 19–089: r. and recr. Register March 2020 No. 771, eff. 4–1–20.

DCF 202.07 Complaints. (1) Except as provided in sub. (2), a certification agency shall investigate a complaint about a certified child care operator within 10 working days after receiving the complaint.

(2) No later than the next day after a certification agency receives a complaint or self–report that suggests imminent danger may exist to the health, safety, and welfare of children in care, the certification agency shall respond to a complaint or self–reported incident.

History: Cr. Register, December, 1991, No. 432, eff. 1–1–92; emerg. r. and recr. eff. 7–1–96; r. and recr. Register, February, 1997, No. 494, eff. 3–1–97; renum. from HFS 55.605, Register, July, 1999, No. 523, eff. 8–1–99; CR 07–071: am. Register May 2008 No. 629, eff. 6–1–08; 2015 Wis. Act 132: am. Register February 2016 No. 722, eff. 3–1–16; EmR1918: emerg. r. and recr., eff. 1–30–19; CR 19–089: r. and recr. Register March 2020 No. 771, eff. 4–1–20.

DCF 202.08 Standards for family child care and in-home child care. (1) **QUALIFICATIONS OF PROVIDERS.** (a) *Ability, age and health.* 1. A provider shall be physically, mentally,

and emotionally able to provide responsible child care and shall be at least 18 years of age.

2. Each child care operator shall demonstrate that the operator is free from tuberculosis prior to initial certification. Each provider shall demonstrate that he or she is free from tuberculosis prior to the date the provider begins working with children in care. The certification agency may accept the results of a test administered up to 12 months before the certification date or the date the person began to work with children in care.

(b) *Training.* 1. Training in the most current medically accepted methods for reducing the risk of sudden infant death syndrome is required as follows:

- a. Prior to certification for each child care operator.
- b. Prior to beginning to work with children in care for each provider, including volunteers, substitutes, and emergency back-up providers, or any other person who provides care and supervision for children under one year of age.

2. Department-approved training on shaken baby syndrome, abusive head trauma, and appropriate ways to manage crying, fussing, or distraught children is required, as follows:

- a. Prior to certification for each child care operator.
- b. Prior to beginning to work with children in care for each provider, including volunteers, substitutes, and emergency back-up providers, or any other person who provides care and supervision for children under 5 years of age.

Note: A person who completed a non-credit, department-approved course called either *Introduction to the Child Care Profession* or the *Fundamentals of Infant and Toddler Care* after July 1, 2005 will have met the SBS department-approved training requirement. The department-approved SBS course is also included in the course called *Health, Safety and Nutrition* offered by a Wisconsin technical college taken after July 1, 2005.

3. Each certified child care operator and each provider shall comply with s. 48.651 (1d) (b), Stats., and successfully complete all of the following training by the applicable date specified in subd. 4.:

- a. At least 2 credits in early childhood education or a department-approved non-credit course in caring for children.
- b. A department-approved non-credit course in operating a child care business or a course for credit in business or program administration.
- c. Training in child abuse and neglect laws and identifying, documenting, and reporting child abuse and neglect.

Note: A person who completed a non-credit, department-approved course called the *Introduction to the Child Care Profession* will have met the child abuse and neglect training requirement.

d. Obtain and recertify as necessary to maintain current certification in infant and child cardiopulmonary resuscitation (CPR). The CPR training must result in a certificate of completion. If the certificate of completion does not have a date specifying the length of time for which it is valid, the CPR training must be renewed every year. Time spent renewing cardiopulmonary resuscitation may be counted towards the required continuing education hours under subd. 5.

4. a. A regular child care operator shall complete department-approved preservice training under subd. 3. prior to the certification agency granting regular certification.

b. A provisional certified child care operator shall complete department-approved preservice training under subd. 3. within 3 months after provisional certification.

c. A provider working in a regular or provisional certified child care program shall successfully complete department-approved preservice training under subd. 3. by 3 months after work commencing.

d. A substitute shall complete the training specified in subd. 1. and 2. but need not meet requirements under subd. 3. until the substitute has worked for 240 cumulative hours.

5. After completion of preservice training under subd. 3., a child care provider shall receive and document receiving at least

5 hours of qualifying continuing education annually. Continuing education qualifies under this subdivision if it covers any of the following:

- a. Prevention and control of infectious diseases.
- b. Prevention of sudden infant death syndrome and use of safe sleeping practices.
- c. Administration of medications, consistent with parental consent.
- d. Prevention of and response to emergencies due to allergic reactions to food or other allergens.
- e. Building and physical premises safety, including identification of and protection from electrical hazards, bodies of water, vehicular traffic, and other hazards that can cause bodily injury.
- f. Prevention of shaken baby syndrome and abusive head trauma.
- g. Emergency preparedness and response planning for emergencies resulting from natural disaster or human-caused events.
- h. Handling and storage of hazardous materials and the appropriate disposal of biocontaminants. In this subd. 5. h., "biocontaminants" includes blood, body fluids, or excretions that may spread infectious disease.
- i. Transportation safety, if appropriate.
- j. First aid and cardiopulmonary resuscitation.
- k. Identification and reporting of suspected child abuse or neglect.
- L. Caring for children with disabilities.
- m. Nutrition.
- n. Other topics that promote child development or protect children's health and safety.

6. Continuing education hours completed in excess of the 5 hour requirement in subd. 5. may be used to meet the continuing education requirement for the following year.

(1m) GENERAL CONDITIONS OF APPROVAL AND OPERATIONAL REQUIREMENTS. (a) *Administration.* 1. A certified child care operator shall be a responsible, mature individual who is fit and qualified. In determining whether an applicant is fit and qualified, the certification agency shall consider qualifications under sub. (1) and any information listed under s. DCF 202.02 (7m) by the applicant, operator, household member, or other individual directly or indirectly participating in the operation of the certified child care.

2. Prior to receiving or continuing certification, an applicant or operator shall complete all application forms truthfully and accurately and pay all fees that are due to the certification agency or to the department.

3. A certified child care operator shall ensure that any action, by commission or omission, or any condition or occurrence relating to the operation or maintenance of the child care premises does not adversely affect the health, safety, or welfare of any child in care.

4. A certified child care operator shall comply with all laws governing the certified child care program and its operation, including s. 48.686, Stats., and ch. DCF 13 and ensure that all employees and volunteers comply with these laws.

5. A certified child care operator shall comply with all requirements in this chapter and ch. DCF 13 and with any conditions or restrictions placed on the certification.

6. A certified child care operator shall include in its personnel or operating policies a provision that requires a provider to notify the child care operator as soon as possible, but no later than the child care program's next working day, of the reporting requirements under par. (b) 5. to 7.

7. A certified child care operator shall ensure all information provided to the certification agency and the department is current and accurate.

8. A certified child care operator shall maintain a current written record on each child in care, including the provider's own chil-

dren under 7 years of age, and make the record available to a child care certification worker upon request.

9. A certified child care operator shall permit a child care certification worker to have unrestricted access to the premises, including access to children served, child records, and any other materials related to compliance under this chapter.

10. A certified child care operator shall comply with all of the following conditions of the operator's certification:

a. The number of children in care at any time may not exceed the number specified.

b. The age of the children in care may not be younger or older than the age range specified.

c. The hours, days and months of operation may not exceed those specified. Care provided in excess of the specified hours is unregulated.

d. The certification is non–transferrable, is granted only to the designated operator, and is limited to the stated location.

(b) *Reports.* A certified child care operator shall report all of the following to the certification agency as soon as possible, but no later than the certification agency's next working day:

1. An accident or incident that occurs while a child is in care of a provider resulting in an injury requiring professional medical evaluation.

2. The death of a child in care of a provider.

3. Any damage to the premises that may affect compliance with this chapter, or any incident at the premises that results in the loss of utility service.

4. Construction or remodeling of the premises that has the potential to affect an area accessible to children or have an effect on health and safety of children in care.

5. Known convictions, pending charges, or other offenses of the child care operator, household member, or other person subject to the child care background check.

6. Involvement by law enforcement in response to any of the following:

a. A threat to cause physical or serious emotional harm to any individual, including a child in care, by the operator, a household member, or other person subject to the child care background check.

b. A moving violation by a driver that transports children in care, regardless of whether the children are present at the time of the violation.

7. Suspected abuse or neglect of a child by a provider, volunteer, or household member that was reported under sub. (14), including any incident that results in a child being forcefully shaken or thrown against a hard or soft surface during the child's hours of attendance.

8. A prohibited action specified under sub. (7) (b) by a provider, volunteer, or household member.

9. An injury caused by an animal to a child in care.

10. The operator intends to hire a new employee or volunteer.

11. A current household member turns 10 years of age.

12. The operator's tax identification number changes or the legal name associated with the tax identification number changes.

13. A name change by a person subject to the child care background check.

(c) *New household member.* A certified family child care operator shall submit a completed background check request form to the department or certification agency for each potential household member 10 years of age or older prior to the date on which the person becomes a household member.

(d) *Approval for changes.* An operator shall submit a request to the certification agency if the operator wishes to change any of the following:

1. The hours, days, or months that the operator provides care.

2. The name of the operator's child care program.

3. The operator's phone number.

4. The operator's physical address.

5. Transportation services.

(e) *Plan of correction.* 1. If requested by the certification agency, an operator shall submit a plan of correction for cited violations of this chapter, ch. DCF 13, or s. 48.686, Stats., to the certification agency by the date the agency specifies.

2. The operator shall submit a revised plan of correction to the agency if the initial plan is not accepted by the agency.

(f) *Approval required before working in program.* A provider, substitute, employee, or volunteer for a certified child care operator shall be approved by the certification agency before the person begins working in the certified child care program. The certification agency may approve the provider, substitute, employee, or volunteer if the agency has verification that the individual has met the standards under sub. (1) (a) and (b) and has been determined eligible by the department under s. 48.686 (4p), Stats., and s. DCF 13.06.

(2) **CERTIFIED FAMILY CHILD CARE OPERATOR'S HOME.** A certified family child care operator's home and play area shall meet all of the following requirements:

(a) Exits to the home shall comply with the following:

1. All exits shall be clear of obstruction.

2. Each floor or level used for child care shall have at least 2 exits.

3. The primary exit shall be a door or a stairway providing unobstructed travel to the outside of the building at street or ground level.

4. If the care is not provided in a basement, the secondary exit shall be one of the following:

a. A door or stairway that provides unobstructed travel to the outside of the building at street or ground level.

b. A door or stairway leading to a platform or roof with railings which has an area of at least 25 square feet, is at least 4 feet long, and is not more than 15 feet above the ground level.

c. A window not more than 46 inches above the floor that is capable of being opened from the inside without the use of tool or removal of a sash and which has a window opening size of at least 20 inches in width and 24 inches in height.

5. If the care is provided in a basement, the secondary exit shall be one of the following:

a. A door or stairway that provides unobstructed travel to the outside of the building at street or ground level.

b. A window not more than 46 inches above the floor that is capable of being opened from the inside without the use of tool or removal of a sash and which has a window opening size of at least 20 inches in width and 24 inches in height. The window shall open directly to the ground or to a window well with an area of at least 6 square feet that is not more than 46 inches below the ground.

(am) 1. A one–unit or two–unit residential building shall have a functional carbon monoxide detector installed in the basement and on each level of the building, excluding the garage and attic, in accordance with the requirements of s. 101.647, Stats.

2. A residential building with at least 3 units shall have one or more functional carbon monoxide detectors installed in accordance with the requirements of s. 101.149, Stats.

(ar) The home shall have a functional smoke detector on each floor level in accordance with the requirements of s. 101.645, Stats.

(b) All areas used for child care shall have adequate and safe heat, light and ventilation, including all of the following:

1. The inside temperature of the home may not be less than 67 degrees Fahrenheit.

2. If the inside temperature exceeds 80 degrees Fahrenheit, a child care provider shall provide for air circulation with safe fans, air conditioning, or other means.

(c) The indoor and outdoor areas of the home shall be free of hazards. Potentially dangerous items and materials harmful to children, including power tools, flammable or combustible materials, insecticides, matches, drugs, and any articles labeled hazardous to children, shall be in properly marked containers and stored in areas inaccessible to children.

Note: Lists of recalled products are available on the United States Consumer Safety Commission website, <https://www.cpsc.gov/>.

(cm) Firearms, ammunition, and bows and arrows with sharp tips that are located on the premises or in a vehicle used to transport children shall be kept in locked storage and may not be accessible to children.

(e) Outdoor play areas shall be well–drained and be free of hazards, and have the following protections in place:

1. Concrete and asphalt shall be prohibited under climbing equipment, swings, and slides.

2. Hot tubs may not be used by children in care and shall be inaccessible to children by use of a locked rigid cover, permanent barrier, or other protective measure.

3. Structures such as playground equipment, railings, decks, and porches accessible to children and built with CCA–treated lumber shall be sealed with an oil–based sealant or stain at least every 2 years.

4. Wood treated with creosote or pentachlorophenol, including railroad ties, may not be used in areas accessible to children.

5. On–ground or in–ground swimming pools on the premises may not be used by children in care and shall be inaccessible to children in care by use of a permanent enclosure or other protective measure.

6. Wading pools may be used if the water is changed daily and the pool is disinfected daily. A provider shall be outside with children providing sight and sound supervision when a wading pool containing water is present in the outdoor play area.

7. An outdoor play area shall have a permanent enclosure not less than 4 feet high to protect the safety of children in care. Fencing, plants, or landscaping may be used to create a permanent enclosure. If the outdoor play area does not have a permanent enclosure, a provider shall be outside with children providing sight and sound supervision when children are outside.

(f) The premises, furnishings, and equipment shall be free from litter and vermin, maintained in a sanitary condition, and in good repair.

(g) Bathrooms, including toilets, sinks, and potty chairs, shall be clean and in good working condition. Soap, toilet paper, towels, and a waste paper container shall be provided in the bathroom and shall be accessible to children.

(h) If the home gets water from a private well, water samples from the well shall be tested annually by a laboratory certified under ch. ATCP 77 and shall be found bacteriologically safe. If water test results indicate the water is bacteriologically unsafe, the water shall be appropriately treated and retested until it is determined to be safe. Bottled water shall be used until the water is determined to be safe.

(i) An operator that cares for infants under 6 months of age in a certified child care home that gets its water supply from a private well shall get water samples tested annually by a laboratory certified under ch. ATCP 77 to determine the level of nitrates in the water. If the water sample tests above the maximum allowable levels of nitrates, bottled water shall be used for children under 6 months of age.

(j) Areas, surfaces, equipment, utensils, and appliances used for preparing, serving and storing food shall be kept clean, sani-

tary, and in good working condition. Eating surfaces shall be washed before use.

(k) Smoking is prohibited anywhere on the premises or in a vehicle used to transport children when children are in care.

(L) The premises shall have no flaking, chipping, peeling, or deteriorating paint on exterior or interior surfaces in areas accessible to children.

(m) All of the following regarding pets and animals:

1. Pets in the home shall be tolerant of children and vaccinated against rabies. The rabies vaccination shall be documented with a current certificate from a veterinarian.

2. Animals that may pose any risk to the children may not be in any indoor or outdoor areas used for child care when children are in care.

3. Reptiles, amphibians, ferrets, poisonous animals, psittacine birds, and exotic and wild animals may not be accessible to children.

Note: Psittacine birds are hooked bill birds of the parrot family that have 2 toes forward and 2 toes backward, including macaws, grays, cockatoos and lovebirds.

4. Indoor and outdoor areas accessible to children shall be free of pet and animal excrement.

5. Operators shall ensure they are in compliance with all applicable local ordinances regarding the number, types, and health status of pets and animals.

(3) THE HOME FOR PROVIDING IN–HOME CHILD CARE. (a) A certified in–home child care operator shall ensure that the certified child care home and outside play area of the children in care complies with sub. (2) (am), (ar), (c), (cm), (e) 1., 2., 5., 6., and 7., (j), and (k).

(b) A certified in–home child care operator is not required to comply with subs. (2) (a), (b), (e) 3. and 4., (f), (g), (h), (i), (L), (m), (4) (hm), (8m), and (12) (e).

(4) HEALTH. (a) Except as provided under pars. (c) and (d), a certified child care operator shall have a current report of a physical examination on file for each child, including the operator's own children in care, as follows:

1. For a child under 2 years of age, a report of a physical examination conducted not more than 6 months prior to nor later than 3 months after the child is admitted, and a follow–up health examination at least once every 6 months thereafter.

2. For a child 2 years of age or older, a report of a physical examination conducted not more than 2 years prior to nor later than 3 months after the child is admitted, and a follow–up health examination at least once every 2 years thereafter.

(b) The physical examination report shall be made on an electronic printout from a licensed physician, physician assistant, or health check provider or on a form provided by the department that is signed and dated by a licensed physician, physician assistant, or health check provider.

Note: The department's form, *Child Health Report – Child Care Centers*, or an electronic printout from a medical professional may be used to document a health examination. Information on how to obtain the department's form is available on the department's website, <http://dcf.wisconsin.gov>, or from the certification agency.

(c) The requirement under par. (a) does not apply to a child care operator who requests from the certification agency in writing an exemption for a child based upon adherence by the child's parent to religious belief in exclusive use of prayer or spiritual means for healing.

(d) The requirement under par. (a) does not apply to children 5 years of age and above.

(e) The certified child care operator shall have on file for each child in care a record of the child's immunization history to document compliance with s. 252.04, Stats., and ch. DHS 144.

Note: The Department of Health Services form, *Day Care Immunization Record*, or an electronic printout from the Wisconsin Immunization Registry or other registry maintained by a health provider may be used to document immunization information. Forms are available on the department's website, <https://dcf.wisconsin.gov/cccertification/ccformspubs>.

(f) 1. Medications shall be stored so they are not accessible to children.

2. A child care provider may administer prescription or non-prescription medication to a child only if all of the following conditions are met:

a. The medication is in the original container and is labeled with the child's name, dosage, and administration directions.

b. The child's parent has given written and signed permission to administer the medication to the child as directed on the label.

(g) A child care provider shall wash his or her hands with soap and warm running water after toileting, prior to food preparation, after handling pets or animals, and after diapering children.

(h) A child care provider shall require all children in the provider's care to wash their hands with soap and warm running water before eating and after toileting or handling pets or animals.

(hm) Children may not share cups, eating utensils, washcloths, or towels, unless care is being provided in the children's home by a certified in-home child care operator.

(i) A provider shall change a child's wet or soiled clothing or diapers promptly from an available supply of clean clothing or diapers. The child's diaper shall be changed on an easily cleanable surface that is cleaned with soap and water and a disinfectant solution after each use. The disinfectant solution shall be registered with the U.S. environmental protection agency as a disinfectant and have instructions for use as a disinfectant on the label. The solution shall be prepared and applied as indicated on the label.

(j) A child care provider shall clean a child's superficial wound with soap and water only and protect it with a band-aid or bandage.

(k) If a child care operator or a child care provider is aware that a child attending certified child care or a child care operator's own child has a reportable communicable disease under ch. DHS 145 that is transmitted through normal contact, the operator or provider shall comply with all of the following requirements:

1. The child care operator or child care provider shall notify the local public health officer and parents of all the enrolled children within 48 hours of being notified of the diagnosis.

2. A child who has or had a reportable communicable disease under ch. DHS 145 may not be admitted to certified child care unless the child's parents provide a statement from a physician that the child's condition is no longer contagious or the child has been absent for a period of time equal to the longest usual incubation period for the disease as specified by the department of health services.

Note: The Division of Public Health within the Department of Health Services has developed materials that identify those communicable diseases that are required to be reported to a local public health officer. These materials also provide information on the symptoms of each disease and guidance on how long an infected child must be excluded from child care. Copies of the communicable disease chart are available on the DHS website at <https://www.dhs.wisconsin.gov/publications/p44397b.pdf>.

(L) No operator, provider, household member, employee, volunteer, visitor, parent or any other person may be in contact with the children in care if any of the following conditions are met:

1. The person has symptoms of illness or of a communicable disease that is reportable under ch. DHS 145 and may be transmitted through normal contact.

2. The person's behavior or mental or physical condition gives reasonable concern for the safety of the children.

(o) A provider shall use universal precautions when exposed to blood or bodily fluids or discharge containing blood. All persons exposed to blood or bodily fluids containing blood or other types of bodily discharges shall wash their hands immediately with soap and warm running water.

(4m) EMERGENCIES. (a) 1. An operator shall have a written plan for taking appropriate action in the event of an emergency including a fire; a tornado; a flood; extreme outdoor heat or cold; a loss of building service, including no heat, water, electricity or telephone; human-caused events, such as threats to the building

or its occupants; allergic reactions; lost or missing children; vehicle accidents; a provider's family situation, such as medical emergency or illness; or other circumstances requiring immediate attention. The plan shall include procedures for all of the following:

a. Evacuation, relocation, shelter-in-place, and lock-down.

b. Communication and reunification with families.

c. Ensuring that the needs of all children are met, including children under 2 years of age, children with disabilities, and children with chronic medical conditions.

2. The plan under subd. 1. shall be reviewed periodically and practiced as specified in the plan.

(b) An operator shall have a written plan to prevent and respond to food and other allergy-related emergencies.

(c) An operator shall designate an emergency back-up provider. The emergency back-up child care provider shall be at least 18 years of age and able to provide an acceptable level of child care.

(d) 1. The home shall have at least one telephone in working order. If a cellular phone is used as a primary phone, it shall be operational during the hours of child care.

2. The home shall have a list of emergency numbers posted in a location known to all providers, including the numbers for the police, fire station, emergency medical care, child protective services agency, and poison control center.

(e) An operator shall ensure that each provider, volunteer, substitute, and emergency back-up provider receives an orientation before beginning work that covers the following:

1. The names and ages of children in care.

2. A review of children's records, including parent and emergency contact information.

3. Specific information relating to a child's special health care needs, including administration of medications, disabilities, allergies, or other special health conditions.

4. A review of the operator's plan for responding to emergencies.

5. A review of this chapter.

(5) SUPERVISION. (a) A child care provider may not be engaged in any other activity or occupation during the hours of operation when children are in care that interferes with the adequate care and supervision of children, except for daily maintenance of the home.

(b) A child care provider shall be awake whenever the children in care are awake.

(c) No individual provider may take care of children for more than 16 hours in any 24-hour period.

(d) The certified child care operator shall ensure that each child has adult supervision at all times and that no person under 18 years of age is left in sole charge of the children.

(e) Each child shall be closely supervised by a provider to guide the child's behavior and activities, prevent harm, and assure safety of children at all times.

(f) No certified operator, provider, employee, volunteer, household member, or any other individual in a home may consume or be under the influence of alcoholic beverages or any non-prescribed controlled substance specified in ch. 961, Stats., during the hours of operation when children are in care.

(h) A provider may not allow any person who may pose a threat to the health or safety of the children to have contact with the children in care.

(i) The certified child care operator shall keep current and accurate written records of the daily hours of attendance of each child in care, including the actual arrival and departure times for each child. If children are transported to or from the premises or school by the operator or another provider on behalf of the opera-

tor, the daily attendance record shall include the actual time the child was picked up or dropped off.

(j) The operator shall maintain documentation of the actual hours that a provider who is not also the operator has worked.

(6) MAXIMUM NUMBER OF CHILDREN. (a) No certified family child care operator may have more than 3 children under 7 years of age who are not related to the child care operator in care at any given time.

(b) No certified family operator may have more than 6 children in care, including children related to the operator, except that:

1. If 3 of the children are under the age of 2, the total number of children may not exceed 5.

2. If 4 of the children are under the age of 2, the total number of children may not exceed 4.

(c) A child care operator’s natural, adopted, step, or foster children 7 years of age or older or any child 7 years and older residing in the operator’s home are not counted in determining the maximum number of children allowed under par. (b).

(d) The maximum number of children that may be in care is shown in Table 202.08 (6).

(e) When a certified in-home child care operator cares for children in the children’s own home, the following apply:

1. The operator is not required to comply with pars. (a) and (b).

2. The operator may not care for any children who do not reside in the home.

Table 202.08 (6)

MAXIMUM NUMBER OF CHILDREN IN CERTIFIED CHILD CARE			
Related or Operator’s Own Children Under 7 years of Age	Non-related Children Under 7 years of age	Additional Children Ages 7 and older	Maximum Number of Children*
0	3		6
1	3	Additional children ages 7 through 12 (if special needs up to 19) may be cared for as long as the maximum total number of children is not exceeded	6
2	3		6
3	3		6
4	2		6
5	1		6
6	0		6

WHEN CHILDREN UNDER THE AGE OF 2 YEARS ARE PRESENT	
Number of Children Under 2 Years of Age	Maximum Number of Children*
0	6
1	6
2	6
3	5
4	4

*The maximum number does not include the certified child care operator’s natural, adopted, step or foster children 7 years of age and older or any children 7 and older who live in the residence.

Note: Under s. 48.65 (1), Stats., if a provider takes care of 4 or more children under the age of 7 who are not related to the provider, for compensation, the provider must obtain from the department a license to operate a child care center.

(7) PROVIDER INTERACTIONS WITH CHILDREN. (a) A child care provider shall interact with the children in a caring and positive manner.

(b) No provider may act in a manner that may be psychologically, emotionally or physically painful, discomfoting, dangerous, or potentially injurious to a child. Prohibited actions include all of the following:

1. Hitting, spanking, pinching, shaking, slapping, throwing, or inflicting any other form of corporal punishment.

2. Physical restraint, binding, or trying to restrict a child’s movement or enclosing a child in a confined space such as a closet, basement, locked room, box, or similar cubicle.

3. Withholding or forcing meals, snacks, or naps.

4. Actions that are cruel, aversive, humiliating, or frightening to the child, including behavior modification techniques resulting in extremely negative consequences.

5. Verbal abuse, threats, or making derogatory remarks about the child or the child’s family.

(c) A provider shall provide positive guidance and redirection for the children and set clear limits for the children.

(d) A provider shall help each child develop self-control, self-esteem, and respect for the rights of others.

(e) If a provider uses time-out periods to deal with unacceptable behavior, a time-out may not exceed 3 minutes and may not be used for children under 3 years of age. For purposes of this paragraph, a “time-out” is an interruption of unacceptable behavior by the removal of the child from the situation, not to isolate the child, but to allow the child an opportunity to pause, and with support from the provider, reflect on behavior and gain self-control.

(f) A provider may not punish a child for lapses in toilet training.

(g) A provider shall respond promptly to a crying infant or toddler’s needs.

(h) A provider shall provide physical contact and attention to each infant and toddler throughout the day, including holding, rocking, talking to, singing to, and taking on walks inside and outside the home.

(i) A provider shall periodically change the position and location in the room of a non-mobile child who is awake.

(8) ACTIVITIES. (a) A child care provider shall plan activities so that each child may be or do all the following:

1. Be successful and feel good about himself or herself.
2. Use and develop language.
3. Use large and small muscles.
4. Learn new ideas and skills.
5. Participate in imaginative play.

(b) A child care provider shall offer daily activities according to the age and developmental level of the children in care and shall include a flexible balance of all the following:

1. Daily indoor and outdoor activities, except that outdoor activities are not required during inclement weather or when not advisable for health reasons.
2. Active and quiet play.
3. Protection from excess fatigue and overstimulation.
4. Individual and group activities.
5. At least 15 minutes reading to the children daily.
6. Opportunities for a non-walking child who can creep or crawl to move freely in a safe, clean, open, warm, and uncluttered area each day.

(c) A child care provider may use television only to supplement daily activities for children. No child may be required to watch television.

Note: For further information, see the Wisconsin Model Early Learning Standards. These voluntary standards are designed to help child care providers develop programs and curriculum to help ensure that children are exposed to activities and opportunities that will prepare them for success in school and into the future. The standards are primarily intended as guidance on developmentally appropriate expectations and are not intended to be used as a checklist to gauge a child’s progress. The standards are based on scientific research. Copies of the Wisconsin Model Early Learning Standards are available on the Wisconsin Early Childhood Collaborating Partners website at <http://www.collaboratingpartners.com/> or the Department of Public Instruction website at <https://dpi.wi.gov/early-childhood/practice>.

(8m) EQUIPMENT AND FURNISHINGS; CERTIFIED FAMILY CHILD CARE OPERATORS. A certified family child care operator shall ensure all of the following conditions are met:

(a) The certified child care home has safe indoor and outdoor play equipment that meets the following conditions:

1. The play equipment is scaled to the size and developmental level of the children in care.

2. The play equipment is constructed in a sturdy manner and is in good operating condition with no sharp, rough, loose, or pointed edges.

(b) Indoor and outdoor areas used for child care include sufficient space for play and for activities that meet the developmental needs of the children in care. Various types of play equipment are provided to allow for large and small muscle activity, dramatic play, and intellectual stimulation.

(c) Indoor play equipment is provided to allow each child a choice of at least 3 activities involving equipment when all children are using equipment.

(d) Outdoor play equipment is provided to allow each child at least one activity when all children are using equipment at the same time.

(e) No trampolines or inflatable bounce surfaces on the premises are accessible to children or used by children in care.

Note: Subsection (8m) does not apply to certified in-home child care operators.

(9) TRANSPORTATION. (a) 1. Except as provided in subd. 2., this subsection applies to all transportation of children in care, including both regularly scheduled transportation to and from the premises and field trip transportation, if any of the following apply:

- a. The operator owns or leases the vehicle used.
- b. The operator contracts with another individual or organization that owns or leases the vehicle used.
- c. Employees, parents, or volunteers are transporting children other than their own at the direction of, request of, or on behalf of the operator.

2. The following requirements do not apply to transportation provided in vehicles owned and driven by parents or volunteers:

- a. The requirement that the certification agency obtain a copy of the driver's driving record under par. (f).
- b. The requirements related to child care vehicle safety alarms under pars. (p) to (s).

(b) Before transporting a child, an operator shall obtain signed permission from the parent for transportation and emergency information for each child. The form shall include all of the following information:

1. The purpose of the transportation and the parent or guardian's permission to transport the child for that purpose.
2. The length of time the child will be transported.
3. An address and telephone number where a parent or other adult can be reached in an emergency.
4. The name, address, and telephone number of the child's health care provider.
5. Written consent from the child's parent for emergency medical treatment.

Note: The operator may use the department's form, *Child Care Enrollment and Health History—Certified Child Care*, to obtain consent of the child's parent for emergency medical treatment. Forms are available on the department's website, <https://dcf.wisconsin.gov/cccertification/ccformspubs>.

(c) An operator shall ensure that a written list of children being transported, copies of completed permissions, and emergency information for each child being transported is maintained at the premises and in any vehicle transporting children while the children are being transported.

(d) The driver of a vehicle used to transport children in care shall be at least 18 years of age, have at least one year of driving experience, and hold a valid driver's license for the state where the driver resides and for the type of vehicle driven.

(e) Before a driver who is not the operator first transports children, the operator shall review all of the following with the driver:

1. The procedure for ensuring that all children are properly restrained in the appropriate child safety seat.

2. The procedure for loading, unloading, and tracking of children being transported.

3. The procedure for evacuating the children from a vehicle in an emergency.

4. Behavior management techniques for use with children being transported.

5. Applicable statutes and rules affecting transportation of children.

6. First aid procedures.

7. Child abuse and neglect laws and reporting procedures.

8. Information on any special needs a child being transported may have and the plan for how those needs will be met.

9. Vehicle alarm operation, if applicable.

(f) 1. Prior to the day a driver first transports children in care, the operator shall submit to the certification agency a copy of the driving record for each driver and obtain approval of the driver from the certification agency.

2. In determining whether a driver may pose a threat to the children, the certification worker shall consider the totality of the driver's record, any other relevant facts, and the following factors in combination:

- a. The seriousness of any accidents or violations.
- b. The amount of time that has passed since an accident or violation occurred.
- c. The number of accidents or violations.
- d. The likelihood that a similar incident will occur.

3. A driver whose driving record indicates that the driver poses a threat to the children may not transport children.

Note: Information on how to obtain driving records may be obtained by contacting the Department of Transportation at (608) 261-2566 or <http://dot.wisconsin.gov/drivers/drivers/point/abstract.htm>.

(g) 1. Except as provided in subd. 2., a driver of a vehicle that is transporting children in care may not use a cellular phone or other wireless telecommunication device while loading, unloading, or transporting children, except when the vehicle is out of traffic, not in operation, and any of the following applies:

- a. The phone or device is used to call 911.
- b. The phone or device is used to communicate with emergency responders.
- c. The phone or device is used to communicate with the certified child care operator or a provider regarding an emergency situation.

2. A navigation device may be used during transportation of children if the device is programmed to a destination when the vehicle is out of traffic and not in operation.

(h) The operator shall ensure that each vehicle that is used to transport children is all of the following:

1. Registered with the Wisconsin department of transportation or the appropriate authority in another state.
2. Clean, uncluttered, and free of obstruction on the floors, aisles, and seats.
3. In safe operating condition.

(i) The operator shall obtain and maintain vehicle liability insurance with minimums no less than those specified in subch. VI. of ch. 344, Stats. The operator shall maintain proof of insurance and make this information available to the certification worker upon request.

(j) No person may transport a child under 8 years of age in a motor vehicle, unless the child is restrained in a child safety restraint system that is appropriate to the child's age and size in accordance with s. 347.48, Stats., and ch. Trans 310.

Note: For further information on child safety restraints, see <https://wisconsin.gov/Pages/safety/education/child-safety/default.aspx>.

(k) 1. Each child who is not required to be in an individual child car safety seat or booster seat when being transported under

par. (j) shall be properly restrained by a seat belt in an operating vehicle in accordance with s. 347.48, Stats., and ch. Trans 315.

2. Each adult shall be properly restrained by a seat belt in an operating vehicle in accordance with s. 347.48, Stats., and ch. Trans 315.

3. Seat belts may not be shared.

(L) Children transported in school buses or vehicles built to school bus standards shall be properly seated according to the manufacturer's specifications.

(m) The operator shall be responsible for a child from the time the child is placed in a vehicle until the child reaches his or her destination and is released to a person responsible for the child.

(n) Children may not be left unattended in a vehicle.

(nm) Children under 13 years of age may not ride in the front seat of a vehicle.

(o) Rides to and from the certified child care, field trips, or other program activities may not exceed 60 minutes each way.

(p) A vehicle shall be equipped with a child safety alarm that prompts the driver to inspect the vehicle for children before exiting if all of the following conditions apply:

1. The vehicle is owned or leased by the operator or a contractor of the operator.

2. The vehicle has a seating capacity of 6 or more passengers plus the driver. The seating capacity of the vehicle shall be as determined by the manufacturer.

3. The vehicle is used to transport children in care.

(q) No person may shut off a child safety alarm unless the driver first inspects the vehicle to ensure that no child is left unattended in the vehicle.

(r) The child safety alarm shall be in good working order each time the vehicle is used for transporting children.

(s) At least annually, the operator shall make each vehicle that is required to have a child safety alarm under par. (p) available to the child care certification worker to determine whether the child safety alarm is in good working order.

Note: Information on the required vehicle safety alarm is available on the department's website, <https://dcf.wisconsin.gov/ccregulation/providers>.

(10) MEALS AND SNACKS. A child care provider shall ensure that each child receives proper nourishment while in child care as follows:

(a) Each child shall be served one meal or snack at least once every 3 hours. Each meal and snack shall meet the U.S. department of agriculture child and adult care food program minimum meal requirements.

Note: The USDA meal program requirements are found on the U.S. Department of Agriculture website, <http://www.fns.usda.gov/cacfp/meals-and-snacks>.

(b) Each child in attendance for 4 or more hours shall be served a meal.

(bm) Enough food shall be prepared for each meal, so second portions of vegetables, fruit, grains, and milk are available to children.

(c) A child that is unable to hold a bottle is held whenever a bottle is given. Bottles may not be propped.

(11) REST. A child care provider shall ensure that each child has a clean, comfortable and safe place to rest as follows:

(a) Each child shall be allowed to have undisturbed rest or a nap, when needed, in a place that is clean, safe and comfortable.

(b) Each child shall have a personal clean sheet or blanket or both and pillowcase if a pillow is used.

(c) To reduce the risk of sudden infant death syndrome, each infant shall be placed to sleep on his or her back, unless otherwise directed by the child's physician. All sleeping arrangements for children under one year of age shall use firm mattresses.

(d) A safe crib or playpen with a tight-fitting mattress with a tight-fitting covering shall be available for each child under one

year of age to use for napping or sleeping. The crib or playpen may not contain soft or loose materials, such as sheepskins, pillows, blankets, flat sheets, bumper pads, bibs, pacifiers with attached soft objects or stuffed animals. A certified family child care operator shall ensure that each crib used by a child in care satisfies the applicable federal safety standards in 16 CFR Part 1219 or 1220.

Note: A crib that was manufactured or sold before June 28, 2011, may not satisfy the crib safety standards in 16 CFR Part 1219 or 1220.

(12) PROVIDER AND PARENT COMMUNICATION. The certified child care operator shall be in ongoing communication with a child's parent or ensure that a substitute child care provider is in ongoing communication with a child's parent by doing all of the following:

(a) Allowing parents to visit and observe the program of child care during any hours that care is being provided.

(b) Talking to each child's parent at least once a week about his or her child's development, activities, likes and dislikes.

(c) Developing a written contract that specifies the charge for child care and the expected frequency of payment for the service. The contract shall be signed by the operator and a parent or guardian.

(d) Making a copy of the applicable certification standards available to each parent.

(e) Displaying a copy of the certificate in an area easily seen by parents and visitors, unless the operator is a certified in-home child care operator.

(f) Prior to a child's first day of attendance for any child in care, obtaining information on a form prescribed by the department with enrollment and health history information, including all of the following:

1. The parents' home and work phone numbers.

2. Health history, including information relating to a child's special health care needs and emergency care plan.

3. The parents' signed consent for emergency medical care.

4. A name and number to call if the child requires emergency medical care.

Note: The form *Child Care Enrollment and Health History—Certified Child Care* is available on the department's website, <https://dcf.wisconsin.gov/cccertification/ccformspubs>.

(g) Using information obtained on the department-provided "child care intake for child under 2 years" form, which collects essential information for infants and toddlers, to individualize the program of care for each child under 2 years of age.

(h) Informing a child's parent of any disciplinary action taken or any injury to the child that occurred during child care hours.

(i) Informing the parent in writing whether the premises and the child care business are covered by a child care liability insurance policy.

(k) Notifying the parent in advance of the date, time, and destination of a field trip that is not considered part of the regularly scheduled program.

(13) DISCRIMINATION PROHIBITED. No certified child care operator may discriminate on the basis of race, color, sex, sexual orientation, creed, disability, religion, or national origin or ancestry in accepting children or in the employment of employees.

(14) MANDATORY CHILD ABUSE OR NEGLECT REPORTING. A provider who knows or has reasonable cause to suspect that a child in care has been abused or neglected or that the child has been threatened with abuse or neglect and that abuse or neglect will occur shall immediately inform the department, local law enforcement, or other organization designated in s. 48.981, Stats.

(15) CONFIDENTIALITY. (a) An operator shall ensure that persons having access to children's records do not discuss or disclose personal information regarding the children and facts learned about the children and their relatives. This subsection does not apply to any of the following:

1. The parent.
2. Any person, business, school, social services provider, medical provider, or other agency or organization if written parental consent has been given.

3. Agencies authorized under s. 48.78, Stats.

(b) All records required under this chapter for certification purposes shall be available to the child care certification worker.

History: Cr. Register, August, 1985, No. 356, eff. 9-1-85; emerg. r. (1) (d), eff. 11-5-85; r. (1) (d), Register, April, 1986, No. 364, eff. 5-1-86; r. and recr. (1) (a), (b), (2) (L), (4), (5) and (8), r. (1) (c), Register, December, 1991, No. 432, eff. 1-1-92; emerg. r. and recr. eff. 7-1-96; r. and recr. Register, February, 1997, No. 494, eff. 3-1-97; reprinted to insert dropped copy in (4) and (5), corrections made in (1) (a) made under s. 13.93 (2m) (b) 7., Stats., Register, July, 1997, No. 499; renum. from HFS 55.61, cr. (2) (n) and (5) (i) and am. (3) and (6) (d), Register, July, 1999, No. 523, eff. 8-1-99; correction in (2) (k) and (5) (f) made under s. 13.93 (2m) (b) 7., Stats. Register, July, 1999, No. 523; CR 02-007: am. (1) (a) 3., (2) (c) (intro.), 2., 3., (d), (e) (intro.), (f), (g), (k), (5) (i), (6), (7) (b), (8) (a) 2., 3., and (12) (c) and (f) (intro.), renum. and am. (1) (b) 1. to be (1) (b) 2. a. and (8) (a) 4. to be (8) (a) 5., cr. (1) (b) 1., 2. (intro.), (2) (cm), (e) 1., 2., 3., (o), (4) (i), (j), (7) (d) to (j), (8) (a) 4., 8., (9) (d), (e), (11) (c), (d), (12) (g), (h), (i), (14), and (15), renum. (1) (b) 2. to be (1) (b) 2. b., (8) (a) 5. and 6. to be (8) (a) 6. and 7., and r. (2) (h) Register May 2002 No. 557, eff. 6-1-02; CR 07-071: am. (title), (1) (a) 3., (b) 1., 2. (intro.), a., (2) (intro.), (c) (intro.), (e) (intro.), 2., (f), (j) to (L), (3), (4) (a) (intro.), 2., (c), (e) to (j), (5) (a), (b), (d) to (i), (6) (c), (d), Table 55.08 (6), (7) (intro.), (b), (9) (intro.), (a), (d), (10) (intro.), (11) (intro.), (12) (intro.), (c), (g) to (i) and (13), cr. (1) (b) 1. a., b., 2. c., d., (d), (e), (2) (am), (b) 1., 2., (p), (4) (k), (5) (em), (j), (6) (e), (8m), (9) (c) 1 to 4., and (12) (j), r.

and recr. (1) (c), (2) (a), (6) (a), (b) (intro.) and (8), renum. (2) (b) and (9) (c) to be (2) (b) (intro.) and (9) (c) (intro.) and am., r. (15) Register May 2008 No. 629, eff. 6-1-08; corrections in (1) (a) 2., (b) 2. a., (d), (4) (d), (e), (k), (6) (d), (e) and (12) (j) made under s. 13.92 (4) (b) 6. and 7., Stats., Register November 2008 No. 635; 2015 Wis. Act 132: am. (1) (a) 3., (b) 2. b., c., (c) (intro.), (d), (e) 3., r. (2) (a) 2m., am. (2) (g), (o), (4) (b), (c) Register February 2016 No. 722, eff. 3-1-16; CR 14-028: cr. (9) (f) Register July 2016 N0. 727, eff. 8-1-16; EmR1918: emerg. r. and recr. (1), cr. (1m), r. and recr. (2) (title), (intro.), (am), cr. (2) (ar), am. (2) (b) 2., r. and recr. (2) (c), am. (2) (cm), r. (2) (d), am. (2) (e) (intro.), 2., r. and recr. (2) (e) 3., cr. (2) (e) 4. to 7., r. and recr. (2) (f), (g), cr. (2) (h), r. and recr. (2) (i) to (m), r. (2) (n) to (p), r. and recr. (3), (4) (title), am. (4) (a) 1., 2., (d), (e), r. and recr. (4) (f), am. (4) (g), (h), cr. (4) (hm), am. (4) (i), (k) (intro.), 1., cr. (4) (L), (o), (4m), am. (5) (a), (c), (d), r. and recr. (5) (e), r. (5) (em), am. (5) (f), r. (5) (g), am. (5) (h), (i), r. and recr. (5) (j), (7), am. (8) (title), (8m) (title), cr. (8m) (intro.), r. and recr. (8m) (a), am. (8m) (b) to (d), cr. (8m) (e), r. and recr. (9), am. (10) (intro.), (a), (b), cr. (10) (bm), am. (10) (c), (11) (intro.), (c), (d), (12) (c), (e), r. and recr. (12) (f), am. (12) (i), r. (12) (j), cr. (12) (k), am. (13), (14), cr. (15), eff. 1-30-19; CR 19-089: r. and recr. (1), cr. (1m), r. and recr. (2) (title), (intro.), (am), cr. (2) (ar), am. (2) (b) 2., r. and recr. (2) (c), am. (2) (cm), r. (2) (d), am. (2) (e) (intro.), 2., r. and recr. (2) (e) 3., cr. (2) (e) 4. to 7., r. and recr. (2) (f), (g), cr. (2) (h), r. and recr. (2) (i) to (m), r. (2) (n) to (p), r. and recr. (3), (4) (title), am. (4) (a) 1., 2., (d), (e), r. and recr. (4) (f), am. (4) (g), (h), cr. (4) (hm), am. (4) (i), (k) (intro.), 1., cr. (4) (L), (o), (4m), am. (5) (a), (c), (d), r. and recr. (5) (e), r. (5) (em), am. (5) (f), r. (5) (g), am. (5) (h), (i), r. and recr. (5) (j), (7), am. (8) (title), (8m) (title), cr. (8m) (intro.), r. and recr. (8m) (a), am. (8m) (b) to (d), cr. (8m) (e), r. and recr. (9), am. (10) (intro.), (a), (b), cr. (10) (bm), am. (10) (c), (11) (intro.), (c), (d), (12) (c), (e), r. and recr. (12) (f), am. (12) (i), r. (12) (j), cr. (12) (k), am. (13), (14), cr. (15) Register March 2020 No. 771, eff. 4-1-20; correction in (1) (b) 5. h., (1m) (a) 5., (2) (e) (intro.), (3) (b), (9) (k) 1., 2. made under s. 35.17, Stats., Register March 2020 No. 771; **CR 20-003: cr. (9) (nm) Register July 2020 No. 775, eff. 8-1-20.**