



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2009 Wisconsin Act 76
[2009 Senate Bill 331]

**Background Investigations of Child
Care Providers and the Wisconsin
Shares Child Care Subsidy**

Child Care Providers

Under current law, the Department of Children and Families (DCF) licenses child care homes and centers where four or more children are cared for. A county department of human or social services or, in Milwaukee County, DCF certifies smaller providers who care for children who receive a child care subsidy under the Wisconsin Works (W-2) Program.* Finally, a school board may contract for the provision of child care services. This memorandum will refer to licensed and certified child care providers and those that contract with a school board as “child care providers” collectively.

Denial of Licensure, Certification, or Contract Based Upon Background

Under *current law*, a child care provider may not be licensed, certified, or contracted with and a license, certification, or contract may not be continued or renewed if any of the following is known or should have been known:

- That the person has been convicted of a serious crime or has been adjudicated delinquent on or after his or her 12th birthday for committing a serious crime. “Serious crime” is defined under s. 48.685 (1) (c), Stats., and includes certain crimes against life or bodily security and certain crimes against children that are felonies.
- That a unit of government or a state agency has made a finding that the person has abused or neglected any client or misappropriated the property of any client.

* DCF may also contract with a W-2 agency, a child care resource and referral agency, or other agency to certify child care providers. These agencies have the same responsibilities regarding background checks as DCF or a county department.

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature’s Web site at: <http://www.legis.state.wi.us/>.

- That a determination has been made under ch. 48, Stats., that the person has abused or neglected a child.
- That, in the case of a position for which the person must be credentialed by the Department of Regulation and Licensing (DRL), the person's credential is not current or is limited so as to restrict the person from providing adequate care to a client. [s. 48.685 (4m) (a), Stats.]

A child care provider may not employ or contract with a caregiver or permit a nonclient resident to reside with the child care provider if the provider knows or should have known that any of the above applies to that person. [s. 48.685 (4m) (b), Stats.] "Caregiver" is defined as a person who is, or is expected to be, an employee or contractor of a child care provider, who is expected to be under the control of the child care provider, and who has, or is expected to have, regular, direct contact with clients of the child care provider. [s. 48.685 (1) (ag), Stats.]

Act 76 provides that a child care provider may not be licensed, certified, or contracted with and a license, certification, or contract may not be continued or renewed if it is known or should have been known that the person is the subject of a pending criminal charge or delinquency petition alleging that the person committed a serious crime on or after his or her 12th birthday. The same requirements apply to caregivers and nonclient residents. Under the bill, "serious crime" includes the crimes discussed below for which a person may not demonstrate rehabilitation.

If a child care provider is convicted of a serious crime or if a caregiver or a nonclient resident of the child care provider is convicted or adjudicated delinquent for committing a serious crime on or after his or her 12th birthday, DCF, a county department, or a school board must revoke the license or certification of the child care provider or rescind the contract with the child care provider immediately upon providing written notice of revocation or rescission, the grounds for revocation or rescission, and an explanation of the process for appealing the revocation or rescission.

In addition, if a child care provider is the subject of a pending criminal charge alleging that the person has committed a serious crime or if a caregiver or a nonclient resident of the child care provider is the subject of a pending criminal charge or delinquency petition alleging that the person has committed a serious crime on or after his or her 12th birthday, DCF, a county department, or a school board must immediately suspend the license, certification, or contract of the child care provider until obtaining information regarding the final disposition of the charge or delinquency petition indicating that the person is not ineligible to be licensed or certified or to provide a child care program under contract with a school district.

Offenses for Which a Person May Not Demonstrate Rehabilitation

Current law does not specify offenses for which a child care provider, caregiver, or nonclient resident of a child care provider may not demonstrate that he or she has been rehabilitated.

Act 76 provides that, for purposes of licensing or certifying a child care provider, a school district contracting with a person to operate a child care center, or for permitting a person to be a caregiver or nonclient resident of a child care provider, no person who has been convicted or adjudicated delinquent on or after his or her 12th birthday for committing specified offenses or who is the subject of a pending criminal charge or delinquency petition alleging that the person has committed such an offense on or after his or her 12th birthday may be permitted to demonstrate that he or she has been rehabilitated. These offenses include any felony under the chapter setting forth crimes against children,

except failure to pay child support and hazing; battery causing substantial bodily harm or substantial or aggravated battery if the victim is the spouse of the person; first- or second-degree intentional homicide, first- or second-degree reckless homicide, or felony murder; first-, second-, or third-degree sexual assault; reckless injury; kidnapping; a violation relating to background investigations required for child care providers if the violation involves the provision of false information or the intentional withholding of information; and an offense involving fraudulent activity as a W-2 participant. The Act also prohibits a person from demonstrating rehabilitation for certain offenses if the person completed his or her sentence, including any probation, parole, or extended supervision, or was discharged by the Department of Corrections (DOC), less than five years before the date of the background investigation. Finally, a child care provider may not demonstrate rehabilitation if he or she is convicted of certain offenses related to misappropriation of property or against a financial institution.

Information From the Sex Offender Registry

Current law requires DCF, a county department, or a school board to obtain specified information in order to conduct a background investigation, including a criminal history search from the records maintained by the Department of Justice and information maintained by DCF regarding any substantiated reports of child abuse or neglect against the person.

Act 76 additionally requires DCF, a county department, or a school board to obtain information that is contained in the sex offender registry regarding whether the person has committed a sex offense that is a serious crime. The same information must be obtained with respect to caregivers and nonclient residents.

Frequency of Background Investigations

Under ***current law***, background investigations for child care providers, caregivers, and nonclient residents must be obtained every four years.

Act 76 provides that this information must be obtained every three months for persons who are licensed or certified to operate as a child care provider or contract to provide child care and every year for all persons who are nonclient residents and caregivers of such a provider or at any time within that period that DCF, a county department, a school board, or a provider considers appropriate.

Wisconsin Shares Child Care Subsidy Program

Refusal to Pay Child Care Providers

Under ***current law***, DCF or a county department may refuse to pay a child care provider for child care provided under the Wisconsin Shares program if any of the following applies to the child care provider, employee, or person living on the premises where the child care is provided:

- The person has been convicted of a felony or misdemeanor or is the subject of a pending criminal charge that DCF or the county department determines substantially relates to the care of children or to the operation of a business.
- The person has been determined under ch. 48, Stats., to have abused or neglected a child.

- DCF or the county department suspects that the person has violated any provision under the program under which the payments are made or any rule related to the program.

The Act provides that if a child care provider is convicted of a serious crime or a caregiver or nonclient resident of the child care provider is convicted or adjudicated delinquent on or after his or her 12th birthday, DCF or a county department must refuse to pay the child care provider for any child care provided beginning on the date of the conviction or delinquency adjudication. If a child care provider is the subject of a pending criminal charge alleging that the person has committed a serious crime or if a caregiver or nonclient resident of the child care provider is the subject of a pending criminal charge or delinquency petition alleging that the person has committed a serious crime on or after his or her 12th birthday, DCF or the county department must immediately suspend payment to the child care provider for any child care provided until DCF obtains information regarding the final disposition of the charge or delinquency petition indicating that the person is not ineligible to receive such a payment.

Five-Year Ineligibility to Receive a Child Care Subsidy

Under *the Act*, if a court finds, or if it is determined after an administrative hearing, that a recipient or former recipient of a child care subsidy has violated any provision of the Wisconsin Shares statutes or rules, the individual is ineligible to receive a subsidy for up to five years beginning on the date of the judgment or decision. This provision took effect on **November 26, 2009**.

Reporting of Suspected Frauds

The Act creates provisions relating to reporting suspected fraud. Under the Act, if any employee of DCF, a county, or a tribal governing body reasonably suspects that fraudulent activity in public assistance programs has occurred or is occurring, the employee must immediately report the facts and circumstances contributing to that suspicion to their immediate supervisor.

A supervisor who receives such a report must immediately evaluate the report to determine whether there is reason to suspect that the fraudulent activity has occurred or is occurring. If the supervisor determines that there is reason to suspect that the fraudulent activity has occurred or is occurring, the supervisor must immediately report the facts and circumstances contributing to that suspicion to the unit of DCF that is responsible for investigating suspected fraudulent activity. In addition, if the immediate supervisor is an employee of DCF or of a county having a population of 145,000 or more (Brown, Dane, Kenosha, Milwaukee, Outagamie, Racine, Rock, Waukesha, and Winnebago), the supervisor must also immediately report those facts and circumstances to the sheriff. Any person who fails to report as required under this provision may be required to forfeit not more than \$1,000.

Under the Act, if an employee of DCF, DHS, a county, or a tribal governing body reasonably suspects fraudulent activity relating to the Wisconsin Works program or other economic support program under ch. 49, Stats., and reports the facts and circumstances contributing to that suspicion to any management employee of DCF, DHS, the county, or the tribal governing body or to the district attorney, the employee is generally immune from liability and may not be subject to disciplinary action for good faith involvement in a fraud proceeding.

Use of Recovered Public Assistance Funds

The Act allows county departments, W-2 agencies, and tribal governing bodies to use recovered public assistance overpayments for any purpose allowable under the federal temporary assistance to needy families (TANF) program, rather than only for cash benefits to W-2 participants. This provision took effect on ***November 26, 2009***.

Effective date: Act 76 takes effect on February 1, 2010, unless otherwise noted above.

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December 8, 2009

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