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State of Wisconsin
Governor Jim Doyle

DCF/DECE OPERATIONS MEMO

No: 09-81

DATE: 12/22/2009

FS	<input type="checkbox"/>	MA	<input type="checkbox"/>	BC+	<input type="checkbox"/>
SC	<input type="checkbox"/>	CTS	<input type="checkbox"/>	CC	<input checked="" type="checkbox"/>
W-2	<input type="checkbox"/>	FSET	<input type="checkbox"/>	EA	<input type="checkbox"/>
CF	<input type="checkbox"/>	JAL	<input type="checkbox"/>	JC	<input type="checkbox"/>
RAP	<input type="checkbox"/>	WIA	<input type="checkbox"/>	Other	<input type="checkbox"/> *
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PRIORITY: HIGH

TO: Income Maintenance Supervisors
Income Maintenance Lead Workers
Income Maintenance Staff
W-2 Agencies
Workforce Development Boards
Job Center Leads and Managers
Training Staff
Child Care Coordinators/Certifiers

FROM: Laura Saterfield, Bureau Director
Bureau of Early Childhood Education
Division of Early Care and Education

SUBJECT: Changes in the Caregiver Law – Certified Child Care Providers

CROSS REFERENCE: Certification Policy and Caregiver Manuals

EFFECTIVE DATE: 02/01/2010

PURPOSE:

The purpose of this memo is to inform child care certification agencies about an upcoming change in the Caregiver Law.

BACKGROUND:

On November 13, 2009, Governor Jim Doyle signed into law changes to caregiver background checks that will affect all certified child care providers. The Wisconsin Act 76 is found at <http://www.legis.state.wi.us/2009/data/acts/09Act76.pdf>. The changes in this act will affect the frequency that background checks must be done but also establishes 3 new categories of 'serious crimes' instead of the current one. These modifications will take effect on **February 1, 2010**.

FREQUENCY OF THE CAREGIVER BACKGROUND CHECKS (CBC)

Providers:

The new law requires the certifying agencies to conduct the Department of Justice (DOJ)/Department of Health Services (DHS, IBIS) check **every 3 months** on all certified child care providers (4 times each year).

Household members, employees, assistants, helpers, etc:

The new law requires the certifying agencies to conduct a DOJ/DHS check **once each year**.

CHECKING CHILD ABUSE/NEGLECT FILES

The certifying agencies must continue checking the CPS files before initial certification and must work in collaboration with county CPS agencies to ensure that information about substantiations of abuse and neglect by child care providers or employees is shared immediately with the certifying agency. The department is working to include information contained in eWisAcwis (a database that includes child abuse/neglect information) into the IBIS report, so the information will become part of the DOJ/DHS check. Also, the department will continue to receive monthly matches between eWisAcwis data and CCPC information, which must be followed up on immediately.

Note: The eWisAcwis database only includes information from 2002 and forward. Some CPS units started using the database even later than 2002. For this reason, the certifying agencies must conduct a search with the local CPS unit for all new applicants, household member and employees to have them check older files that existed prior to the statewide eWisAcwis system at initial application. For ongoing cases, any potential CPS involvement will be captured in the monthly matches.

BACKGROUND INFORMATION DISCLOSURE (BID) FORMS

The new law requires the agencies to collect a BID from the provider **every 2 years** but the household members, employees, volunteers, etc must submit it **once a year**. The BID form is found on <http://dcf.wisconsin.gov/childcare/certification/forms.htm> in English, Hmong and Spanish.

Note: Under the new law, any individual providing false information or intentionally withholding information related to the caregiver background check will be subject to a permanent bar. See http://dcf.wisconsin.gov/childcare/licensed/pdf/2009_06_crimes_list.pdf.

MINORS

The current procedures require the provider to submit BID forms for minors 10 and older. The new law will change this to 12 years; however, DCF 202 certification rules require the BID to be submitted for children 10 and older. The department will change this age to 12 during the next rule change in 2010.

The new law continues requiring a CBC check if the child indicates a concern on the BID or the minor is a caregiver in the care setting.

CHANGES TO THE LIST OF CONVICTIONS – SERIOUS CRIMES

Under the current law, child care providers, household members and caregivers were subject to rehabilitation review if they had a conviction for one of the crimes or offenses listed in Section II of Appendix A of administrative code DHS 12. The new law creates three different categories of serious crimes:

Permanent Bar:

Under the new law, some convictions will carry a permanent bar that will not permit a person to be a certified provider, reside in, or work as a caregiver for a child care setting. A person who has a conviction or an offense that permanently bars him/her is not eligible to apply for certification.

5-Year Bar:

Some convictions will impose a bar for 5 years. After the 5 years have passed (after the person has completed probation and parole or extended supervision) the bar is no longer in effect; however, the agency should evaluate whether or not the offense potentially substantially relates to care of children or activities of the program. See Chapter 11 of the Caregiver Manual at <http://dcf.wisconsin.gov/childcare/certification/pdf/caregivermanual.pdf>.

Barred crimes requiring rehabilitation review:

Finally there are convictions/offenses (mostly on the current list of serious crimes) that continue to require a rehabilitation review approval before a person may be approved for certification, reside in, or work as a caregiver in a child care setting.

List of Serious Crimes:

The list of serious crimes is found at

http://dcf.wisconsin.gov/childcare/licensed/pdf/2009_06_crimes_list.pdf. Some crimes on this list specifically indicate if the barred offense is a felony (F) or a misdemeanor (M). If no (F) or (M) is listed, then either type of offense will bar the person.

Some crimes on this list create a permanent bar **only** if the provider/applicant has committed the offense. If a household member, employee, etc has a conviction or a pending charge on one of these crimes, then the agency must evaluate whether or not the offense substantially relates to the care of children or activities of the program.

CURRENT CERTIFIED PROVIDERS, HOUSEHOLD MEMBERS, AND OTHER CAREGIVERS

The law applies to all current providers, household residents and caregivers in a certified child care home or school age program as well as applicants for certification and new employees after 2/1/10. This means that even if the county/tribe has issued certification or allowed a person to reside at a child care center with a criminal conviction in the past, the county/tribe is now required to revoke certification, or remove a household resident or an employee who has an offense that will permanently bar that person. The county/tribe is also required to revoke the certification in those situations where a person has a conviction that will require a rehabilitation review.

SUSPENSION OF CERTIFICATION

Under the new law, the county/tribe is required to suspend certification if the provider, a household resident or caregiver has any **pending** charges for a crime included on the revised crimes list.

WISCONSIN SHARES SUBSIDY PAYMENTS AFFECTED BY THE NEW LAW

The 2009 Wisconsin Act 76 also has effects on the Wisconsin Shares Subsidy Program:

Convictions of Serious Crimes:

If a child care provider, caregiver or household resident is **convicted** of committing a serious crime, the department or the county agency **may not pay** the child care provider under Wisconsin Shares beginning on the date of the conviction.

Pending Charges:

If a child care provider, caregiver or household resident is the subject of a **pending criminal charge** alleging that the person has committed a serious crime, the department or the county agency must **immediately suspend payments** to the provider under Wisconsin Shares until information regarding the final disposition of the charge is received. If the person is convicted of committing the serious crime, the department or the county agency may not pay for Wisconsin Shares. If the person is not convicted of committing a serious crime, the department or the county agency may reinstate payments for Wisconsin Shares if the conviction does not substantially relate to the care of children or the operation of a business.

The Department may refuse to pay a child care provider under Wisconsin Shares if a child care provider, caregiver or household resident is convicted of a crime that is not included on the crimes list but the Department determines that the crime for which the person was convicted substantially relates to the care of children or the operation of a business. The Department may also refuse to pay a child care provider under Wisconsin Shares if the child care provider, a caregiver or a household resident is the subject of the pending criminal charge that substantially relates to the care of children, has a substantiated finding of child abuse or neglect or has violated any provision or rule promulgated under Wisconsin Shares.

IMPLEMENTATION OF THE PROVISIONS OF THE NEW LAW

The Counties/Tribes must begin conducting caregiver background checks (DOJ/DHS) on providers every 3 months (4 times a year) after February 1, 2010. The agencies must conduct the checks within each quarter for all providers. The first quarter starts on 2/1/10. The checks on household members must be conducted each year.

INFORMING CERTIFIED PROVIDERS ABOUT THE NEW LAW:

The department will be mailing a letter to all certified providers in early January to inform them about the changes in the caregiver law. A copy of the letter will be emailed to the certifying agencies.

FEES

The statutes give the regulating agencies the authority to charge a fee for the background checks on providers, household members, and other caregivers as long as the fee does not exceed a reasonable cost of obtaining the information. The fees have not changed.

DUAL-REGULATED PROVIDERS

If a certified provider is also licensed, there is no need for both regulatory agencies to conduct the CBC search. In these cases, please contact your regional licensing office to coordinate sharing of the CBC information.

REPORTING DENIALS/REVOCATIONS DUE TO A SERIOUS CRIME

If a provider's certification is denied or revoked due to a serious offense that bars the person from being a certified provider, the certifying agency must continue to report these denials/revocations to DCF by using the DHS 12 Action Notice listed at http://dcf.wisconsin.gov/forms/pdf/dcf_f_cfs2191.pdf. Please fax the form to DCF 608-267-2200, attention Pirkko Moilanen.

All denials/revocations due to the three categories of serious crimes must be coded as 'Denial/Revocation – bar w/ rehab' in the Child Care Provider Certification (CCPC) system.

AUTOMATION

The CCPC system currently sends out alerts when the background checks are due. The system will be modified; however, the system changes will not be in production before 2/1/10. Again, the agencies will be notified when the changes have been implemented.

CONTACT

Please contact Pirkko.moilanen@wisconsin.gov or KaralynA.Kratowicz@wisconsin.gov with further questions on this topic.