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TO: Income Maintenance Supervisors
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Workforce Development Boards
Job Center Leads and Managers
Training Staff
Child Care Coordinators/Certifiers

FROM: Jill Chase, Bureau Director
Bureau of Early Care Regulation
Division of Early Care and Education

DFES OPERATIONS MEMO					
No: 10-70					
DATE: 09/17/10		REVISED			
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"/> *
PRIORITY: HIGH					

SUBJECT: Child Care Certification – Permanent Bar for False Information on BID Forms

EFFECTIVE DATE: Immediately

CROSS REFERENCE: Certification Policy and Caregiver Manuals, Operations Memo 09-81

PURPOSE:

The purpose of this memo is to inform child care certification agencies about a policy clarification regarding permanent bar for false information/withholding information on the Background Information Disclosure (BID) form.

BACKGROUND:

2009 Wisconsin Act 76 (the new caregiver law) with effective date of 2/1/10 creates a permanent bar in certain situations if a person provides false information or withholds information on BID. The DCF Office of Legal Counsel has reviewed Wis. Stat. § 48.685 (new caregiver law) to determine whether inaccurate information on a BID form would be a permanent bar.

POLICY

Permanent Bar for Certified Child Care Operators

Wisconsin Statutes require the certification applicant/operator submit BID form for her/himself. Therefore, any operator/applicant providing false information to the regulatory agency or

intentionally withholding information from the regulatory agency on BID forms is subject to a permanent bar.

The withholding of information must be intentional. Regarding the provision of false information, false is to be defined as an intentional, deliberate, and willful untruth, something beyond mere inaccuracy. "False" should be construed to mean intentionally or willfully untrue. Therefore, if information is absent due to a mistake that would not be a permanent bar.

If certification applicant/operator provides inaccurate information on a BID by mistake, that would not be a permanent bar. As with almost all instances related to regulation, the certifying agency will have to use their discretion regarding whether the applicant/operator intentionally provided false information or whether it was an honest mistake. For instance, it would be difficult to believe that someone "forgot" about being convicted of theft 2 years ago. However, it would appear to be an honest mistake if a person checked "yes" regarding convictions but then a background check showed no criminal record and the applicant stated that s/he was confused by the question and really meant to check "no".

With respect to inaccurate information on BID forms completed by non-client residents and other caregivers (substitutes, volunteers, helpers, etc), generally, the agency cannot permanently bar **the operator/applicant** for inaccurate information provided by someone else. However, if the applicant/operator may be denied/revoked if the applicant knew that inaccurate information was being provided.

Examples:

- A family child care applicant's/operator's 18 year-old son, a household member, completes a BID which says that he has never been convicted of a crime but was really convicted of disorderly conduct and paid a fine, the agency cannot hold that against the applicant/operator if s/he was unaware that her son had such a conviction. However, using that same set of facts, if that applicant's/operator's 18 year old son was convicted of battery and spent one year in prison and s/he submitted his BID form showing no convictions, then the applicant/operator would have intentionally submitted false information.
- A certification applicant/operator for family child care certification submits a BID completed by her husband which shows no convictions and a search uncovers a criminal conviction from 1976 for drug possession, if would be reasonable to assume that the applicant/operator didn't know about that if it occurred before she met her husband. However, if they have been married since 2000 and the criminal search shows a conviction for drug possession in 2006, then it would appear that the applicant/operator was intentionally withholding information by submitting that inaccurate BID related to her husband. This would be permanent bar.
- A certification applicant/operator rents a room in her home and submits a BID for the tenant. The BID indicates no conviction but the DOJ check reveals a criminal conviction. In this case, it is very unlikely that the applicant/provider would have known about the conviction.

The agencies will need to look at the facts of each particular case and make a decision based on the evidence presented to the agency. If the agency denies/revokes an application/operator who provides false information/withholds information on BID, the agency must submit DHS 12 – Negative Action Notice to DCF. The form is found at http://dcf.wisconsin.gov/forms/pdf/pcf_f_cfs2191.pdf.

It is important that the certification agencies communicate to the applicants/operators that applicants/operators are responsible for reviewing all BID forms that the provider submits for their household members and other caregivers.

NOTE: The BID form question Section A1, asks the person to list any **criminal** pending charges or convictions. Criminal offenses are misdemeanors or felonies. Omitting non-criminal offenses, does not create a bar such as; municipal or ordinance violations; dismissed charges; completed first offenders program; expunged records or deferred judgment agreements that have been fulfilled and the charges dismissed. Traffic offenses may not be a criminal offense; unless the conviction is for criminal traffic then the severity is identified as a misdemeanor or felony.

Permanent Bar for Non-client Residents (household members), Caregivers (employees, volunteers, substitutes, etc).

Wisconsin Stat. § 48.685 does not permanently bar non-client residents or caregivers from obtaining a child care regulatory approval if they withhold information or provide false information on BID forms. The statute only permanently bars the certification applicant/operator who provides false information or withhold information on BID forms.

Example – employment: Mary applied for ABC Child Care Center as an assistant teacher. When completing her BID for the employer, she omitted to list a criminal conviction 6 years ago. ABC Child Care refused to employ her due to the omission. This act does **not** bar Mary from regulatory approval to be a certified or licensed child care provider in the future.

Example – regulatory approval: If Mary were to apply to be certified or a licensed child care provider and failed to disclose on the BID submitted to the regulator agency that she had a criminal conviction 6 years earlier, this would be a permanent bar. After being denied/revoked from child care certification due to this violation, she would be permanently barred from child care employment/residency in the future.

Wisconsin Stat. § 48.685(5)(br) (<http://www.legis.state.wi.us/statutes/Stat0048.pdf>) states that if a person has committed any of the below offenses, he or she is barred from having a child care regulatory approval. The "below" offenses include numerous enumerated convictions under sections 1, 2, and 3, and then also includes a number 4. "4" states that if a person **violates** certain subsections by withholding information or providing false information, then he or she is barred from holding a childcare certification. One of these subsections is (6), which includes subsection (6)(am), a provision mandating that certification applicants/operators require caregivers and nonclient residents to complete BID forms.

The issue is whether (6)(am) creates a permanent bar against non-client residents and caregivers if they submit a false BID form or withhold information on a BID form while either living with or working for another provider. The statutory language is clear that it would not.

Subsection (6)(am) is a requirement for the certification applicant/operator, not the non-client residents or caregivers. The duty is on the certification applicant/operator; therefore, it would be impossible for a household member or caregiver to "violate" this section since the duty is not on the household member or caregiver. If the household member or caregiver cannot violate the section, then the household member or caregiver cannot be permanently barred because the only ones that can be permanently barred are those that "violate" the section.

Subsection (6)(am) places a duty on the certification applicant/operator to require any nonclient residents and caregivers to complete a BID form. Therefore, a violation of this section would be if the applicant/operator did not require any nonclient residents or employees to complete a timely BID form. Caregivers and nonclient residents cannot violate subsection (6)(am) since the duty is placed on the applicant/operator.

Employees, helpers, volunteers and substitutes

DCF 202.08(1)d states:

(d) Substitutes, employees, and volunteers. A substitute, employee, or volunteer for a Level I or II child care operator shall be approved by the county or tribal agency before employment or volunteer work commences. **The county or tribal agency shall approve the substitute, employee, or volunteer if the agency has verification that the substitute, employee, or volunteer has met the standards under s. DCF 202.05, regarding the criminal history and child abuse record search,** and completed the training on sudden infant death syndrome and shaken baby syndrome and impacted babies required under par. (b) 1.

The certified child care operator must notify the certifying agency prior to hiring a substitute, employee, volunteer, etc by submitting a BID form to the agency. If the employee provides false information or withholds information on BID, the agency may refuse to approve the employee, however, this would not permanently bar the substitute, employee, or volunteer from being employed in another center in the future or from regulatory approval.

TIME LINE:

False information submitted on a BID in connection with the new caregiver law can be considered a barred offense if it was provided on or after February 1, 2010. If the false information was provided prior to February 1, 2010, a bar would not exist.

CONCLUSION

Certification applicants/operators are the only ones that are capable of violating subsection (6) of Wisconsin Stat. § 48.685, which is related to BID forms. The language of the statute places a duty on the operator and not on the caregivers or non-client residents. Therefore, applicants/operators are the only ones that can be permanently barred if they provide false information or intentionally withhold information on a BID form. False information is to be construed as intentionally provided false information. Merely providing inaccurate information is not enough to permanently bar an applicant/operator.

Note: A person who provides false information or withholds information is not eligible for a Rehabilitation Review per Wisconsin Stat. § 48.685(5)(br)4.

CONTACT:

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