

Jim Doyle  
Governor



1 WEST WILSON STREET  
P O BOX 2969  
MADISON WI 53701-2969

Karen E. Timberlake  
Secretary

**State of Wisconsin**  
Department of Health Services

Telephone: 608-266-8481  
FAX: 608-267-0352  
TTY: 888-241-9432  
dhs.wisconsin.gov

**Date:** December 4, 2008

DQA Memo 08-029

**To:** Home Health Agencies  
Hospices

HHA 11  
HSPC 14

**From:** Otis Woods, Administrator  
Division of Quality Assurance

Revisions to Wisconsin Statutes, Chapter 50 and ch. HFS 12  
Effective November 1, 2008 - New Disclosure Requirements

As many of you are aware, Governor Jim Doyle signed 2007 Wisconsin Act 172 into law on March 26, 2008. The new law created section 50.065 (2m) of the Statutes which, effective November 1, 2008, requires entities to disclose to a client, or to the client's guardian certain information regarding a caregiver who is assigned to provide personal care services in a client's residence. A complete text of the new law can be found at the following link:  
<http://www.legis.state.wi.us/2007/data/acts/07Act172.pdf>.

Chapter 50.065 (1) (cr), Stats., defines personal care services to mean assistance with activities of daily living, including eating, bathing, grooming, dressing, transferring and toileting. Personal care services are also defined to include assistance with meal preparation, food purchasing, changing or laundering of a client's linens or clothing, routine care of vision or hearing aids or light cleaning of areas of the residence that are used during the provision of services. For purposes of this requirement, a client's residence does not include a nursing home [s. 50.01 (3)]; community based residential facility [s. 50.01 (1g)], adult family home [s. 50.01 (1)] or a residential care apartment complex [s. 50.01 (1d)].

The new law also requires the Department of Health Services to specify by rule crimes for which an entity must disclose a conviction of its caregivers who are assigned to provide personal care services. These crimes are contained in ch. HFS 12.115, effective November 1, 2008. A copy of ch. HFS 12.115 is attached to this memo.

### Disclosure Requirements

Effective November 1, 2008, home health agencies and hospices are required to disclose, in writing, to a client or to the client's guardian, the following information regarding a caregiver who is assigned to provide personal care services before the caregiver provides services:

- Any conviction of a crime listed in HFS 12.115.

- Whether the caregiver has received rehabilitation approval through the Department's rehabilitation review process.
- That if the entity assigns a substitute caregiver, the agency is not required to disclose the information obtained through the caregiver background check or a conviction of a crime, if any.

The agency must also notify the client or the client's guardian that, for a fee, the Department of Justice will perform a criminal history record search on an individual.

The disclosure requirements apply to any agency who will assign a caregiver to provide personal care services to a client. For example, if an aide is assigned by the agency to provide personal care services, the disclosure requirements would apply. However, if a nurse or a therapist is assigned to provide skilled nursing or therapy services, the disclosure requirements would not apply regardless of any incidental personal care services that may also be provided.

The law requires that each time the agency completes the caregiver background check, the agency must disclose to the client or to the client's guardian, in writing, any conviction of a crime listed in HFS 12.115 and whether the caregiver has been rehabilitated under the Department's rehabilitation review process.

### **Substitute Caregivers**

Chapter 50.065 (2m) (b), Stats., exempts entities from having to make the referenced disclosures for "substitute caregivers" as defined by rule. Effective November 1, 2008, ch. HFS 12.03 (20m) defines a substitute caregiver as an individual who provides personal care services to the client for 7 or fewer days in a 90 day period.

### **Questions**

Please see <http://dhs.wisconsin.gov/caregiver/index.htm> for information on the Caregiver Law and <http://dhs.wisconsin.gov/caregiver/EmplContrs.htm> for caregiver background check process information, including a webcast.

If you have any questions about this information, please contact Shari Busse, Director of the Office of Caregiver Quality, at [shari.busse@wi.gov](mailto:shari.busse@wi.gov) or (608) 264-9876.

**Attachment:** [HFS 12.115 Personal care services, disclosure of convictions](#)