

Update on Wisconsin Caregiver Legislation

Date: December 10, 1999 -- DSL-BQA-99-073

To: Certified Mental Health and AODA **CMHA - 14** Adult Family Homes **AFH - 15**
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From: Donna Cochems, Chief, Caregiver Regulation and Investigation Section

cc: Susan Schroeder, Director, Bureau of Quality Assurance

The 1999-2001 Biennial Budget Bill, enacted as 1999 Wisconsin Act 9 on October 29, 1999, makes several changes to the Wisconsin Caregiver Law. The purpose of this memo is to outline those changes for affected entities. This memo also contains an update to the flowchart that was attached to BQA Memo 99-064, Reporting Incidents of Caregiver Misconduct and Injuries of Unknown Source. The updates to the flow chart are intended to make the chart more user friendly, but do not reflect any change in the reporting requirements stated in the original memo.

Please continue to access our web site, www.dhfs.state.wi.us for updated information on the caregiver law, administrative rules, forms and other important information.

Changes to the Caregiver Law

1. Exempts emergency medical technicians from the caregiver background check requirements of the caregiver law. (Background checks are still required under other program requirements.)
2. Requires a background check for those employees, contractors, and nonclient residents who have "regular, direct contact with clients."
3. Defines "direct contact" as face-to-face physical proximity to a client that affords the opportunity to commit abuse or neglect of a client or misappropriation of a client's property.
4. Expands the type of entities that are subject to the background check requirements to include temporary employment agencies providing the services of caregivers to covered health care and child care entities. Specifies that the covered employees of these temporary employment agencies include all employees who have regular, direct contact with clients.
5. Expands the requirement for performing background checks to include implied contractors, as well as contractors. An implied contractor is someone who provides services on a regular basis, but a formal contract has not been executed and compensation may be in a form other than monetary compensation, such as exchange of services.
6. Reclassifies all "permanent bar" crimes to bar with rehabilitation status for all current and prospective caregivers employed or under contract with entities regulated by BQA.
7. Specifies in statute the crimes or findings that would prohibit employment (unless a person is approved through the Rehabilitation Review process). See the attached table for a description of the crimes listed in Act 9 by statutory number only. Chapter HFS 12, Wisconsin Administrative Code, Appendix A (Crimes List) will soon be updated to also clarify and describe the crimes.

All Entities Covered By Chapters 50 & 48

Statutory Section	Crime or Finding
940.01	1 st degree intentional homicide
940.02	1 st degree reckless homicide
940.03	Felony murder
940.05	2 nd degree intentional homicide
940.12	Assisting suicide
940.19 (2) through (6)	Battery (felony)
940.22 (2)	Sexual exploitation by therapist – sexual contact
940.22 (3)	Sexual exploitation by therapist – duty to report
940.225 (1)	1 st degree sexual assault
940.225 (2)	2 nd degree sexual assault
940.225 (3)	3 rd degree sexual assault
940.285	Abuse of vulnerable adults (felony or misdemeanor)
940.29	Abuse of residents of a penal facility
940.295	Abuse or neglect of patients and residents (felony or misdemeanor)
948.02 (1)	1 st degree sexual assault of a child
948.025	Repeated acts of sexual assault of same child
948.03 (2) (a)	Physical abuse of a child – intentional – cause great bodily harm
----	Governmental substantiated findings of abuse or neglect of a client or of misappropriation of a client's property
----	Determination made under s. 48.981 (3)(c), Stats., that the person has abused or neglected a child

8. Requires entities to obtain the final disposition of any offense whose disposition is incomplete or unclear on the Department of Justice (DOJ) Criminal History Report and to make reasonable efforts to contact the appropriate County Clerk of Courts for a judgment of conviction and criminal complaint related to any crime that is disclosed on a background information disclosure form but does not appear on the DOJ Criminal History Report. When a covered employee or contractor has been convicted of **disorderly conduct, misdemeanor battery, battery to an unborn child, battery-special circumstances, harassment, reckless endangerment, or invasion of privacy** within five years of seeking employment or a contract, the entity is required to contact the appropriate County Clerk of Courts for a judgment of conviction and criminal complaint.
9. Excludes pending criminal charges as a basis to prohibit employment or contract under chapters 48 and 50.
10. Authorizes entities to require, at their discretion, the person whose background is being checked to be fingerprinted on two fingerprint cards, each bearing a complete set of the person's fingerprints, and specifies that the DOJ may provide for the submission of the fingerprint cards to the Federal Bureau of Investigation for the purposes of verifying the identity of the person fingerprinted and obtaining records of his or her criminal arrest or convictions. (This procedure would allow entities to bypass attempting to obtain queries from closed record states.)
11. Specifies that out-of-state background checks include United States jurisdictions other than "states" in order to provide for checks with federal, military, and tribal courts.

12. Delays the effective date for entities to complete background checks on employees hired before October 1, 1998 to February 1, 2000.
13. Delays the deadline for current employees (hired prior to October 1, 1998) with convictions of crimes on the Crimes List to apply for a Rehabilitation Review to February 1, 2000, in order to continue to be employed as a caregiver in a state-regulated facility. Employees hired after October 1, 1998, with convictions of crimes on the Crimes List **after** their hire date must apply for a Rehabilitation Review by February 1, 2000, in order to continue to be employed as a caregiver in a state-regulated facility.
14. Expands the requirement for performing background checks to include the Board on Aging and Long Term Care Ombudsman staff who have regular, direct contact with clients.
15. Authorizes tribes to conduct rehabilitation reviews for entities located on reservations upon approval of a plan submitted to the Department.
16. Requires the University of Wisconsin to prepare a report by June 30, 2001, on the correlation between prior convictions and the propensity to commit future acts of abuse, neglect or misappropriation.
17. Allows the Department to charge a fee for providing information to an entity in order to comply with background check requirements.