

Appendix IV – CAREGIVER PROGRAM REGULATIONS

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| <p>50.065 (2) (b) intro.: ENTITY BACKGROUND CHECK REQUIREMENTS: Every entity shall obtain all of the following with respect to a caregiver of the entity:</p> |
| 1. A criminal history search from the records maintained by the department of justice. |
| 2. Information that is contained in the registry under s. 146.40 (4g) regarding any findings against a person. |
| 3. Information maintained by the department of regulation and licensing regarding the status of the person's credentials, if applicable. |
| 4. Information maintained by the department regarding any substantiated reports of child abuse or neglect against the person. |
| 5. Information maintained by the department under this section regarding any denial to the person of a license, certification, certificate of approval or registration or a continuation of a license, certification, certificate of approval or registration to operate an entity for a reason specified in par. Sub. (4m) (2) 1. to 5. and regarding any denial to the person of employment at, a contract with or permission to reside at an entity for a reason specified in sub. (4m) (b) 1. to 5. |
| <p>50.065 (2) bb.: DETERMINE FINAL DISPOSITION OF CHARGE: If information obtained under par. (am) or (b) indicates a charge of a serious crime, but does not completely and clearly indicate the disposition of the charge or the conviction, the department or entity shall make every reasonable effort to contact the clerk of courts to determine the final disposition of the charge.</p> |
| <p>If a background information form under sub. (6) (a) or (am) indicates a charge or a conviction of a serious crime, but information obtained under par. (am) or (b) does not indicate such a charge, the department or entity shall make every reasonable effort to contact the clerk of courts to obtain a copy of the criminal complaint and the final disposition of the complaint.</p> |
| <p>If information obtained under par. (am) or (b), a background information form under sub. (6) (a) or (am) or any other information indicates a conviction of a violation of s. 940.19 (1), 940.195, 940.20, 941.30, 942.08, 947.01, or 947.013 obtained not more than 5 years before the date on which that information was obtained, the department or the entity shall make every reasonable effort to contact the clerk of courts to obtain a copy of the criminal complaint and judgement of conviction relating to that violation.</p> |
| <p>50.065 (2) bg.: SHARE BACKGROUND INFORMATION WITH OTHER ENTITIES: If an entity hires or contracts with a caregiver for whom, within the last 4 years, the information required under par. (b) 1. to 3. and 5. has already been obtained by another entity, the entity may obtain that information from that other entity which shall provide the information, if possible, to the requesting entity.</p> |
| <p>If an entity cannot obtain the information required under par. (b) 1. to 3. and 5. from another entity or if an entity has reasonable grounds to believe that any information obtained from another entity is no longer accurate, the entity shall obtain that information from the sources specified in par. (b) 1. to 3. and 5.</p> |
| <p>50.065 (2) bm.: OUT-OF-STATE BACKGROUND CHECKS: If the person who is the subject of the search under par. (am) or (b) is not a resident of this state or if at any time within the 3 years preceding the date of the search that person has not been a resident of this state, or if the department or entity determines that the person's employment, licensing, or state court records provide a reasonable basis for further investigation, the department or the entity shall make a good faith effort to obtain from any state or other United States jurisdiction in which the person is a resident or was a resident within the 3 years preceding the date of the search information that is equivalent to the information specified in par. (am) 1. or (b) 1.</p> |
| <p>The department or entity may require the person to be fingerprinted on 2 fingerprint cards, each bearing a complete set of the person's fingerprints. The department of justice 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 the records of his or her criminal arrests and convictions.</p> |
| <p>DHS 12.08: ARMED FORCES BACKGROUND SEARCHES: Armed forces background searches. If a person who is the subject of a background search under ...s.50.065. Stats., served in a branch of the U.S. armed forces, including any reserve component, the agency or entity shall make a good faith effort to obtain the discharge status of that person, either from the discharge papers issued to the person or from the armed forces branch in which the person served. If the discharge status is other than honorable, the agency or entity shall obtain information on the nature and circumstances of the discharge.</p> |
| <p>50.065 (2) (d): MAINTAIN BACKGROUND INFORMATION: Every entity shall maintain, or shall contract with another person to maintain, the most recent background information obtained on a caregiver under par. (b). The information shall be made available for inspection by authorized persons, as defined by the department by rule.</p> |

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| <p>DHS 12.04 (1): CONTRACTING BACKGROUND CHECKS ALLOWED: Contracting for background checks. An entity may enter into and shall retain an agreement or contract with any entity identified under ...s. 50.065 (1) (c), Stats., or with any college, or university, including any vocational or technical college or school, or temporary employment agency or other person, to have the entity, school, temporary employment agency, or other person obtain and retain required background information related to caregivers, including contractors, students, or temporary employees, who, as part of their curriculum, must participate in clinical or practicum experiences at an entity.</p> |
| <p>DHS 12.04 (2): CONTRACTED BACKGROUND CHECK REQUIREMENTS: An entity that enters into an agreement or contract under sub. (1) shall obtain, at a minimum from the other entity, university, college or technical school, temporary employment agency, or other person contracted with, and shall retain so that it may be promptly retrieved for inspection by the agency, a letter indicating the name or names, and social security numbers, if available, of the caregivers, temporary employees, contractors, or students, listing any convictions learned of during the course of the required background checks, along with any substantiated findings of misconduct, licensure denial or restriction or any other credential limitation found by either the department or the department of regulation and licensing.</p> |
| <p>DHS 12.10: BACKGROUND INFORMATION CONFIDENTIALITY REQUIREMENTS: Maintaining confidentiality of background information disclosure forms. Agencies and entities shall retain all required completed department background information forms in a manner that ensures prompt retrieval of the forms for inspection and shall comply with applicable federal and state confidentiality laws.</p> |
| <p>50.065 (3) (b): COMPLETE BACKGROUND CHECK PROCESS: Every 4 years or at any other time within that period that an entity considers appropriate, the entity shall request the information specified in sub. (2) (b) 1. to 5. for all caregivers of the entity.</p> |
| <p>50.065 (4m) (b) intro.: CAREGIVER HIRING AND CONTRACTING PROCESS: Notwithstanding s.111.335, and except as provided in sub. (5), an entity may not hire or contract with a caregiver or permit to reside at the entity a nonclient resident if the entity knows or should have known any of the following:</p> |
| <p>1. That the person was convicted of a serious crime.</p> |
| <p>3. That a unit of government or a state agency, as defined in s. 16.61 (2) (d), has made a finding that the person has abused or neglected any client or misappropriated the property of any client.</p> |
| <p>4. That a determination has been made under s, 48.981 (3) (c) 4. that the person has abused or neglected a child.</p> |
| <p>5. That, in the case of a position for which the person must be credentialed by the department of regulation and licensing, the person's credential is not current, or is limited so as to restrict the person from providing adequate care to the client.</p> |
| <p>50.065 (4m) (c): COMPLETE BACKGROUND INFORMATION DISCLOSURE FORM: If the background information form completed by a person under sub. (6) (am) indicates that the person is not ineligible to be employed or contracted with for a reason specified under par. (b) 1. to 5., an entity may employ or contract with the person for not more than 60 days pending the receipt of the information sought under sub. (2) (b). If the background information form completed by a person under sub. (6) (am) indicates that the person is not ineligible to be permitted to reside at an entity for a reason specified in par. (b) 1. to 5. and if an entity otherwise has no reason to believe that the person is ineligible to be permitted to reside at an entity for any of these reasons, the entity may permit the person to reside at the entity for not more than 60 days pending receipt of information sought under sub. (2) (am). An entity shall provide supervision for a person who is employed or contracted with or permitted to reside as permitted under this paragraph.</p> |
| <p>DHS 12.05(1): ENTITY SANCTIONS: SANCTIONABLE ENTITY ACTIONS. An entity that commits any of the following acts may be subject to any of the sanctions specified in sub. (2):</p> |
| <p>(a) Hires, employs, or contracts with a caregiver, or permits to reside as a nonclient resident at the entity a person who has direct, regular contact with clients and who the entity knew or should have known is barred under ...s. 50.065(4m)(b), Stats.</p> |
| <p>(b) Violates any provision of initial background information gathering or periodic background information gathering required by ...s. 50.065, Stats.</p> |
| <p>DHS 12.05(2): ENTITY SANCTIONS: ENTITY SANCTIONS. Any of the following sanctions may be imposed on any entity that commits any of the acts described in sub. (1):</p> |
| <p>(a) A forfeiture not to exceed \$1,000.</p> |

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| (b) | A requirement that the entity submit to the agency a written corrective action plan specifying corrections that will be made to the identified personnel screening practices needing correction and that the entity implement the plan. |
| (c) | At entity expense, attendance at agency-designated personnel screening training or other appropriate training. |
| (d) | Specific conditions or limitations placed on the license, certification or registration or on a school board-issued contract, including denial, revocation, nonrenewal or suspension of regulatory approval issued by the department, or denial, nonrenewal or termination by a school board of a contract with a day care provider under s. 120.13(14), Stats. |
| (e) | For a person licensed to operate a child welfare agency, shelter care facility, group foster home or day care facility, any sanction or penalty described in s. 48.715, Stats. |
| (f) | A requirement that the entity use, at entity expense, a temporary employment agency for screening and hiring personnel. |
| DHS 12.11: SUPERVISION OF INDIVIDUAL: Entity supervision required under ...s. 50.065 (4m) (c), Stats., shall include at a minimum periodic direct observation of the person. | |
| 50.065 (6) (b): CREDENTIALLED CAREGIVERS: For caregivers who are licensed, issued a certificate of approval or certified by, or registered with, the department, for nonclient residents, and for other persons specified by the department by rule, the entity shall send the background information form to the department. | |
| DHS 12.05 (3): INDIVIDUAL SANCTIONS: SANCTIONABLE INDIVIDUAL ACTIONS. Any person who is required to complete a background information disclosure form and who commits any of the following actions may be subject to any of the sanctions specified in sub (4). | |
| (a) | Fails to complete and submit the background information disclosure form to the appropriate agency or entity. |
| (b) | Knowingly gives false information on or knowingly omits information from the background information disclosure form submitted to an agency or entity. |
| (c) | After submitting a background information disclosure form to an agency or entity, subsequently fails to report any information about a conviction for a crime or other act or offense requested on the background information disclosure form, about a substantiated finding of abuse or neglect of a client or of misappropriation of a client's property, or in the case of a position for which the person must be credentialled by the department of regulation and licensing, about a licensure denial, restriction or other license limitation by either the department or the department of regulation and licensing. |
| DHS 12.05 (4): INDIVIDUAL SANCTIONS: INDIVIDUAL SANCTIONS. All of the following sanctions may be imposed by an agency on any person who commits any of the acts described on sub (3): | |
| (a) | A forfeiture not to exceed \$1,000. |
| (b) | Denial or revocation of regulatory approval or the termination of a contract. |
| (c) | Denial or termination of eligibility to reside at the entity. |
| (d) | Special conditions or limitations placed upon the person, including restriction to an off-premises location during business hours or otherwise restricting the person's contact with clients. |
| DHS 12.07 (1): REPORTING BACKGROUND AND RESIDENCY CHANGES: Reporting background changes and nonclient residency. An entity shall include in its personnel or operating policies a provision that requires caregivers to notify the entity as soon as possible, but no later than the person's next working day, when any of the following occurs: | |
| (a) | The person has been convicted of any crime. |
| (b) | The person has been or is being investigated by any governmental agency for any other act, offense, or omission, including an investigation related to the abuse or neglect of, or threat of abuse or neglect to a child or other client, or an investigation related to misappropriation of a client's property. |
| (c) | The person has a governmental finding substantiated against them of abuse or neglect of a client or misappropriation of a client's property. |

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| (d) In the case of a position for which the person must be credentialed by the department of regulation and licensing, the person has been denied a license, or the person's license has been restricted or otherwise limited. |
| DHS 12.07 (2): INVESTIGATED OR CONVICTED OF A CRIME: When any of the following occurs relative to a signatory or other legal party to the entity application for regulatory approval or under which a contract under s. 120.13 (14), Stats., is signed or relative to a nonclient resident at the entity, an entity shall, as soon as possible but no later than the regulatory's agency's next business day, report the information to the agency that gave regulatory approval. |
| (a) The person has been convicted of any crime. |
| (b) The person has been or is being investigated by any governmental agency for any other act, offense, or omission, including an investigation related to the abuse or neglect or threat of abuse or neglect, to a child or other client. or an investigation related to the misappropriation of a client's property. |
| (c) The person has a governmental finding substantiated against them of abuse or neglect or a client or of misappropriation of a client's property. |
| (d) In the case of a position for which the person must be credentialed by the department of regulation and licensing, the person has been denied a license, or the person's license has been restricted or limited. |
| DHS 12.07 (3): RESIDENCY OR SIGNATORY CHANGE: When a person begins residing at or is expected to reside at an entity, or the signatory for licensure changes, the entity shall, as soon as possible, but no later than the regulatory agency's next business day, report the residency, expected residency, or signatory change to the agency that gave regulatory approval, and submit to the regulatory agency a completed background information disclosure form for the new nonclient resident or new signatory. |
| DHS 12.12 (1) (b) 1.: TRIBAL OR GOVERNING BODY: A tribal governing body may conduct rehabilitation reviews under ...s. 50.065 (5), Stats., if a plan submitted under ...s.50.065 (5d), Stats., has been approved by the department. |
| DHS 12.12 (1) (b) 2.: TRIBAL REHABILITATION REVIEWS: Tribes desiring to conduct rehabilitation reviews shall send a rehabilitation review plan required under ...s 50.065 (5) (d), Stats., to the department. |
| DHS 12.12 (2) (b): REHABILITATION ELIGIBILITY CRITERIA: If a person is eligible to request a rehabilitation review, the agency or tribe from which the person is seeking regulatory approval, or the entity with whom the person is seeking employment as a caregiver or a contract, or where the person wishes to reside shall give the person information on rehabilitation review eligibility criteria and on how to obtain the rehabilitation review request form. |
| DHS 12.12 (6) (d): VIOLATION OF REHABILITATION APPROVAL: <i>Informing agencies or tribes.</i> An agency, entity or tribe other than the agency or tribe that granted a rehabilitation approval that becomes aware that any person has violated his or her rehabilitation approval under par. (b) or (c) shall inform the agency or tribe that granted the approval, of the violation. |
| DHS 12.12 (6) (e) 2.: PROTECTION OF CLIENTS: An agency, entity, or tribe, as applicable, that determines the new information related to an approval violation under par. (c) represents a risk of harm to a client shall also immediately take appropriate measures to protect clients until any appeal filed under par. (g) is exhausted. Appropriate measures may include a repeal of regulatory approval, termination of employment as a caregiver or of approval to reside at an entity, contract termination, reassigning the person away from duties involving direct regular contact with clients or placing the person on temporary leave. |
| DHS 12.12 (7) (c) (1): REHABILITATION REVIEW DECISIONS: <i>Rehabilitation approval transfers.</i> When an agency, tribe, or entity learns from the department's background information disclosure form or in any other way that an applicant for regulatory approval, for employment as a caregiver, or for a contract with or permission to reside at an entity has had a rehabilitation review, the agency, tribe, or entity shall request from the rehabilitation review agency or tribe a copy of the rehabilitation review decision. If the rehabilitation review decision was an approval, the agency, tribe or entity shall determine whether the approval may be applied to the regulatory approval, employment as a caregiver, or contract with or residency at an entity that the applicant currently seeks. |
| DHS 12.12 (7) (c) (2): ACCEPTANCE OF A REHABILITATION GRANTED: Except as specified in subd. 3., an agency, entity, or tribe may review and accept a rehabilitation granted to a person by another agency or tribe if the receiving agency or tribe determines both of the following: |
| a. The crime, act, or offense that required the person to request rehabilitation review is not substantially related to the person's job duties. |

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| b. Any limitations or conditions imposed with the rehabilitation approval continue to be able to be met. |
| DHS 12.12 (7) (c) 3.: NO REHABILITATION APPROVAL OUTSIDE EMPLOYMENT OR CONTRACTING AUTHORITY: No rehabilitation approval granted by a tribe may be transferred outside of the tribe's employment or contracting authority. |
| DHS 12.12 (7) (c) 4.: TRANSFERRING A REHABILITATION APPROVAL: Before transferring a rehabilitation approval under subd. 1., an agency, tribe, or entity shall verify with the department that the applicant has had a rehabilitation review, and if so, the date and status of that review and whether any reason other than the one the applicant reported on the background information disclosure form exists that requires the applicant to request a rehabilitation review. |
| DHS 12.12 (7) (c) 5.: DENIAL OR APPROVAL OF REHABILITATION REVIEW TRANSFERS: If the decision of the agency or tribe that conducted the rehabilitation review is to deny approval of transferring the rehabilitation approval, the agency, entity, or tribe shall determine whether the applicant for regulatory approval, for employment as a caregiver, or for contracting with or residency at an entity is eligible to seek another rehabilitation review under sub. (2), and if so, shall inform the person of his or her eligibility. |
| DHS 13.05 (2): CLIENT PROTECTION: ENTITY'S RESPONSIBILITY TO PROTECT CLIENTS. Upon learning of an incident of alleged misconduct, an entity shall take whatever steps are necessary to ensure that clients are protected from subsequent episodes or misconduct while a determination on the matter is pending. |
| DHS 13.05 (3) (a): ENTITY ALLEGATION REPORTING REQUIREMENTS: ENTITY'S RESPONSIBILITY TO REPORT ALLEGATIONS. <i>Entity's duty to report to the department.</i> Except as provided under par. (b), an entity shall report to the department any allegation of an act, omission or course of conduct described in this chapter as client abuse or neglect or misappropriation of client property committed by any person employed by or under contract with the entity if the person is under the control of the entity. |
| DHS 13.05 (3) (a): REPORT FORM DSL-2447: The entity shall submit its report on a form provided by the department within 7 calendar days from the date the entity knew or should have known about the misconduct. The report shall contain whatever information the department requires. |
| 146.40(4r)(am)(2): DEPARTMENT OF REGULATION AND LICENSING: An entity shall report to the department of regulation and licensing any allegation of misappropriation of the property of a client that or of neglect or abuse of a client by any person employed by or under contract with the entity if that person holds a credential that is related to the person's employment at, or contract with the entity if the person is under the control of the entity. |
| DHS 13.05 (3) (b): DEPARTMENT OF REGULATION AND LICENSING: <i>Entity's duty to report to the department of regulation and licensing.</i> In addition to the reporting requirement under par. (c), an entity shall report to the department of regulation and licensing any allegation of misconduct committed by any person employed by or under contract with the entity, if the person holds a credential from the department of regulation and licensing that is related to the person's employment at, or contract with, the entity. |
| DHS 13.05 (3) (b): REPORT OF INCIDENT: The entity's report shall be made within 7 calendar days from the date the entity knew or should have known about the misconduct. |
| DHS 13.05 (3) (c): REPORT OF CHILD ABUSE OR NEGLECT: <i>Entity's duty to report child abuse or neglect to county authorities.</i> In accordance with s. 48.981, Stats., an entity shall immediately report, by telephone or personally, to the county department of social services or human services or the sheriff, city, village or town police department the facts and circumstances contributing to a suspicion that child abuse or neglect has occurred or to a belief that it will occur. In addition, the entity shall notify the department in writing or by phone within 7 calendar days that the report has been made. |
| DHS 13.05 (3) (d): NOTIFY SUBJECT OF REPORT: <i>Entity's duty to notify subject of the report.</i> An entity shall notify the subject of a report under par (a), (b) or (c) that an allegation of abuse or neglect of a client or misappropriation of a client's property has been made and that the report is being forwarded to the appropriate authority. Notice to the subject of the report shall be given as soon as practicable, but within 7 calendar days of the entity's reporting to the appropriate authority. |