

THE WISCONSIN CAREGIVER PROGRAM MANUAL



for

Entities Regulated by the Division of Quality Assurance

**STATE OF WISCONSIN
DEPARTMENT OF HEALTH SERVICES**
Division of Quality Assurance
Office of Caregiver Quality

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CHAPTER 1 INTRODUCTION

1.1.0 THE WISCONSIN CAREGIVER PROGRAM MANUAL

The Wisconsin Caregiver Program Manual provides detailed information about the Caregiver Law as it relates to Division of Quality Assurance (DQA) regulated entities.

While the Wisconsin Caregiver Law applies to all entities regulated by the Department of Health Services (DHS), this manual focuses on entities regulated by DQA and is designed to provide clear policy and procedure direction for these entities. It is intended to assist entity owners, employees, and non-client residents in understanding their roles and responsibilities under the Wisconsin Caregiver Law.

If you need further assistance, please contact the Office of Caregiver Quality (OCQ) of DQA by phone at (608) 261-8319 or by email at: DHSCaregiverIntake@wisconsin.gov

1.2.0 PURPOSE OF THE WISCONSIN CAREGIVER LAW

s. 50.065, DHS 12

s. 146.40, DHS 13

The Department of Health Services implemented the Caregiver Law on October 1, 1998, under the authority of Act 27 (1997-1999 biennial budget). The 1999 – 2001 Budget Bill, enacted as 1999 Wisconsin Act 9, became effective October 29, 1999. Act 9 amended the original Caregiver Law and is available at the Internet legislative web site at:

<http://www.legis.state.wi.us/billtext.html>

The Wisconsin Caregiver Program responds to the potential for physical, emotional and financial abuse of vulnerable citizens by persons who have been convicted of serious crimes or have a history of improper behavior. The Caregiver Law is intended to protect clients in health care settings from abuse, neglect, or misappropriation of property by requiring employers and licensing agencies to:

- Conduct caregiver background checks;
- Closely examine the results of the caregiver background checks for criminal arrests and convictions or findings of misconduct by a governmental agency; and,
- Make employment and licensing decisions based on the results of the background checks in accordance with the requirements and prohibitions in the law.

Therefore, the Caregiver Law requires two types of caregiver background checks:

- Those completed by entities on their employees and contractors and
- Those completed by the Division of Quality Assurance (DQA) on license holders/legal representatives and non-client residents of DQA regulated entities

Caregivers with convictions of serious crimes or a history of improper behavior may be permanently barred from working in regulated facilities, unless clear and convincing evidence of rehabilitation has been provided to the Department through the Rehabilitation Review process.

Entities that fail to comply with the provisions of the program may be subject to program sanctions, such as a required corrective action plan, mandatory training, or the denial, revocation or suspension of the license, certification, or registration by the Department.

The Caregiver Law also requires all regulated entities to report allegations of abuse, neglect, or misappropriation of client property to DQA, as well as requiring employers to complete background checks for all caregivers employed by entities regulated by the Department.

The Caregiver Program is implemented under ss. 50.065 and 146.40, Wis. Stats., and Chapters DHS 12 and 13 of the Wisconsin Administrative Code, which can be found at: <https://www.dhs.wisconsin.gov/caregiver/statutes.htm>

1.3.0 COMPONENTS OF THE WISCONSIN CAREGIVER PROGRAM

The components of the Wisconsin Caregiver Program include:

- Caregiver background checks
 - Employment and licensing limitations
 - Rehabilitation reviews
 - Investigating and reporting caregiver misconduct
 - The Caregiver Misconduct Registry
-

1.4.0 EMPLOYMENT AND LICENSING PROHIBITIONS

s. 50.065(4m)

The Caregiver Law imposes the following employment and licensing prohibitions on persons who have been convicted of certain crimes and offenses or have governmental findings of misconduct:

- The Department of Health Services (DHS) may not license, certify, or register an entity for that person;
 - A county agency may not certify a day care or license a foster home or treatment foster home for that person;
 - A child placing agency may not license a foster home or treatment foster home or contract with an adoptive parent applicant for a child adoption;
 - A school board may not contract with a licensed day care provider;
 - An entity may not employ, contract with or permit that person to reside at the entity.
-

1.5.0 PROGRAMS COVERED BY THE LAW

DHS 12.02(1)(b)

An entity is any facility, agency, organization, or service that is licensed, approved, certified by, or registered with the Department of Health Services (DHS).

The programs subject to the Caregiver Law are those regulated under Chapters 48, 50, 51, and 146, Wis. Stats. Since this manual focuses on entities regulated by DQA, Chapter 48 programs (day care providers, foster homes, etc.) are not included here.

1.5.1 Programs Covered Under Chapters 50, 51, and 146, Wis. Stats.

- Emergency Mental Health Services Programs – DHS 34
- Mental Health Day Treatment Services for Children – DHS 40
- Outpatient Community Mental Health/Developmental Disabilities – DHS 61
- Community Substance Abuse Services (CSAS) – DHS 75
- Community Support Programs (CSPs) – DHS 63
- Community Based Residential Facilities (CBRFs) – DHS 83

- Adult Family Homes (3 and 4 bed AFHs) – DHS 88
- Residential Care Apartment Complexes (RCACs) – DHS 89
- Hospitals, including Clinics that are part of the hospital – DHS 124
- Rural Medical Centers – DHS 127
- Hospices – DHS 131
- Nursing Homes – DHS 132
- Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICFs/IID) – DHS 134
- Home Health Agencies (including Personal Care and Supportive Home Care services provided by a licensed HHA) – DHS 133
- Certified Personal Care Providers
- Ambulance Service Providers

1.5.2

Entities Not Currently Covered Under the Law

Some entities are not covered under the Caregiver Law; however, they may have a policy of conducting criminal record checks or caregiver background checks. These entities may include:

s. 50.065(1)(ag)2

- Emergency Medical Technicians and First Responders
- County certified Adult Family Homes (1 and 2 bed AFHs)
- Adult Day Services
- Sheltered Workshops (rehabilitation facilities providing daytime vocational services for adults with developmental disabilities)
- Supportive Home Care workers or agencies that are not state-licensed Home Health Agencies
- Rural Health Clinics
- Medical Clinics that are not part of a hospital (unless the medical clinic is using a hospital provider number for billing purposes)
- County agencies not otherwise regulated by the Department

1.6.0

REQUIRED INDIVIDUALS

Both entities and DQA have a responsibility to complete the caregiver background check process on individuals defined as caregivers.

1.6.1

Entity Responsibility

s. 50.065(2)(b)

An entity is required to complete caregiver background checks on caregivers 18 years old and over who are:

- Employees of the entity or
- Contractors with the entity.

(See **Chapter 2.**)

Caregivers under age 18 may not be subject to the full caregiver background check requirement. See 2.1.3 for students and 3.1.3 for non-client residents.

1.6.2

Division of Quality Assurance Responsibility

s. 50.065(2)(am)

The Division of Quality Assurance (DQA) is required to complete caregiver background checks on:

- Individuals who apply for or have regulatory approval to operate an entity regulated by DQA;
- Principal officers, corporate or board members, or managers of the business or organization who have regular, direct contact with clients; and
- Non-Client residents of regulated entities.

(See **Chapter 3.**)

1.7.0

DEFINITIONS

The following definitions apply to the Wisconsin Caregiver Program.

1.7.1

Caregiver

s. 50.065(1)(ag)1.a

A caregiver is a person who is all of the following:

- Employed by or under contract with an entity;
- Has regular, direct contact with the entity's clients or the personal property of the clients; and
- Is under the entity's control.

s. 50.065(1)(ag)1.b

A caregiver is also a person who is one of the following:

- The owner or administrator of an entity, whether or not they have regular, direct contact with clients; or
- A board member or corporate officer who has regular, direct contact with the clients served.

1.7.2

Non-Client Resident

s. 50.065(1)(cn)

A non-client resident is a person 10 years of age or older who is not a client of the entity but who resides at the entity and is expected to have regular, direct contact with entity clients (e.g., owner's family member).

1.7.3

Regular, Direct Contact

DHS 12.03(16)
s. 50.065(1)(br)

"Regular" means contact that is planned, scheduled, expected, or periodic.

"Direct contact," when used in reference to a person's contact with clients, means 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.

1.7.4

Under the Entity's Control

DHS 12.03(25)(a) &
(b)1-6

"Under the entity's control" means a person employed by or under contract with the entity for whom the entity does both of the following:

- (a) Determines whether a person employed by or under contract with the entity that has access to clients may provide care, treatment, or other similar support service functions to clients served by the entity.

- (b) Directs or oversees one or more of the following:
1. The policy or procedures the person must follow in performing his or her duties as a caregiver
 2. The conditions under which the person performs his or her duties
 3. The tasks performed by the person
 4. The person's work schedule
 5. The supervision or evaluation of the person's work or job performance, including imposing discipline or awarding performance awards
 6. The compensation the person receives for performing his or her duties as a caregiver

CHAPTER 2 EMPLOYEE BACKGROUND CHECK PROCESS

2.1.0 EMPLOYEES AS CAREGIVERS

s. 50.065(1)(ag)1a

A caregiver is a person who meets all of the following:

- Is employed by or under contract with an entity;
- Has regular, direct contact with the entity's clients or the personal property of the clients; and
- Is under the entity's control.

This includes employees who provide direct care and may also include housekeeping, maintenance, dietary, and administrative staff, if those persons are under the entity's control and have regular, direct contact with clients served by the entity.

Example

Patricia M. works as a nurse aide at a nursing home. She has regular, direct contact with the nursing home clients and access to their property while in their rooms. The nursing home must retain on file a completed caregiver background check for Patricia.

Example

Sam W., a bookkeeper at a community-based residential facility, is responsible for the lockbox where personal money of the clients is kept. Because he has access to the clients' funds, Sam is subject to the background check process.

2.1.1

Contractors and Implied Contractors

s. 50.065(1)(bm)

The requirement for performing background checks includes contractors, agents of contractors and implied contractors. An agent of a contractor is an employee of the person who actually signed the contract.

An implied contractor is someone who provides services on a regular basis, but a formal contract has not been established and compensation may be in a form other than monetary compensation, such as exchange of services.

2.1.2

Volunteers

Background checks are required for volunteers only if they are being used to:

- Replace a staff person or
- Document compliance with staff-to-patient or staff-to-client ratio requirements.

Volunteers are not otherwise covered under the law.

Example

As a volunteer for her local hospice, Mary N. frequently provides direct care to clients in their homes where she acts as a staff person. Therefore, Mary is subject to the caregiver background check process.

2.1.3

Students

Background checks are required for students who will be completing internships or clinical training at covered entities. All students must complete the Background Information Disclosure (BID) (DHS form F-82064) that must be on file with the entity, unless the school maintains the records under an agreement with the entity (see **2.2.2.**).

s. 50.065(4m)(c)

The complete caregiver background check is not required if the student will be at the entity for less than 60 days, is under supervision, and the student's BID form does not indicate a crime or offense that would make the student ineligible to be placed (see **2.2.3.**).

s. 50.065(2)(bd)

Students under age 18 are also not subject to the full caregiver background check requirement if their completed BID form does not indicate any offense that would make them ineligible.

Students are not eligible to be accepted by an entity if their BID indicates an offense on the Offenses Affecting Caregiver Eligibility list (see **Other Resources - 4**), unless the student applied for and received approval through the Rehabilitation Review process (see **Chapter 5**). Entities may also refuse to accept students because of a conviction that the entity determines is substantially related to the duties of the job.

2.1.4

Temporary Employment Agency Services

DHS 12.04(1)

Temporary employment agencies providing the services of caregivers to covered health care entities are subject to the background check requirements. Covered employees of temporary employment agencies include all employees who have regular, direct contact with clients. Entities may contract out the caregiver background check process to a temporary employment agency but the entity is ultimately responsible for the completion and accuracy of the background check process (see **2.2.2.**).

2.1.5

Individuals Not Defined as Caregivers

A caregiver is not:

- A person who performs solely clerical, administrative, maintenance, or other support functions for an entity and who is not expected to have regular, direct contact with clients or the personal property of clients
- A person who is employed or under contract with an entity to provide infrequent or occasional services, such as delivering items to the facility, equipment maintenance, grounds-keeping, construction, or other similar services that are not directly related to the care of a client

2.2.0

BACKGROUND CHECK PROCESS

s. 50.065(3)(b)

Since October 1, 1998, entities have been required to complete caregiver background checks on all new caregivers. After the initial background check at the time of employment or contracting, entities must conduct new caregiver background checks at least **every four years** or at any time within that period that an entity has reason to believe new checks should be obtained.

2.2.1

Forms Needed

DHS 12.03(3)

To complete caregiver background checks on employees and contractors, an entity must use the following forms:

- **Background Information Disclosure** (BID) (DHS form, F-82064)
- DOJ **Criminal History Record Request** (DOJ form DJ-LE-250 for single name requests or DJ-LE-250A to search multiple names) (Or, see 2.2.4.1. for website information.)

See: <https://www.dhs.wisconsin.gov/caregiver/forms.htm>

2.2.2

Contracting for Background Checks

s. 50.065(2)(d)
DHS 12.04(1)
DHS 12.04(2)

Entities may contract out the caregiver background check process to another party (e.g., staffing agency, technical college, background check service) but the entity is ultimately responsible for the completion and accuracy of the background check process. If the entity contracts with another party to conduct and maintain the background checks, the entity must retain on file a written agreement allowing the party to retain the required background information.

Where there is a written letter of agreement with the entity, schools, temporary employment agencies, or other agencies may conduct and maintain the caregiver background checks. Where such agreements exist, the school, employment agency, or other agency must certify in writing to the entity that the student or caregiver employee has no offenses on the Offenses List (see **Other Resources - 4**) and is therefore eligible for clinical placement or employment at the entity. The school or agency must also advise the entity of any convictions the person has so that the entity may consider whether any convictions are substantially related to the duties of the job.

DHS 12.04(2)

The contracted agency must provide the entity with a letter that includes:

- Each caregiver's name;
- Their social security number, if available;
- Any convictions;
- Any findings of misconduct;
- Any licensure denials or restrictions; or
- Other credential limitations.

2.2.3

Background Information Disclosure Form (DHS form F-82064)

At the time of hire and every 4 years thereafter, caregivers (employees or contractors) must complete a DHS form F-82064, **Background Information Disclosure** (BID), prior to working as a caregiver. This is the first step in the caregiver background check process.

s. 50.065(4m)(c)

A "clean" BID is one with no convictions or findings by a governmental agency of client abuse, neglect, or misappropriation or child neglect or abuse that require a Rehabilitation Review (See **Other Resources - 4**.) or license limitations that prevent a person from working in a position that requires a license.

After reviewing the BID form, persons with a "clean" BID may be allowed to work for up to 60 days, under supervision, pending receipt of the DOJ criminal record search results, the DHS letter, or other necessary documentation.

s. 50.065(2)(bd)

Caregivers under the age of 18 are not subject to the full caregiver background check requirement if their completed BID form does not indicate any offense that would make

them ineligible. When the caregiver turns 18, a complete caregiver background check must be obtained.

DHS 12.06

For other convictions disclosed on the BID, the employer may determine if the conviction is substantially related to the duties of the job. (See **4.3.**) An employer may refuse to hire an applicant because of a conviction that is substantially related to the circumstances of a particular job, but the employer is not required to bar the person from employment.

2.2.3.1

Supervision Pending Complete Check

**s. 50.065(4m)(c)
DHS 12.11**

Entities must provide supervision during the 60-day period pending receipt of a complete caregiver background check. At a minimum, this supervision must include periodic direct observation of the person. New employees should be supervised to at least the same extent as any other employee. The specific definition of supervision varies with each program type and each covered entity must follow its own requirements for supervision (e.g., DHS 83 Community-based Residential Facilities, DHS 124 Hospitals, etc.).

2.2.3.2

Out-of-State Record Search

s. 50.065(2)bm

The entity must make a good faith effort to obtain out-of-state conviction records from any state or other US jurisdiction (e.g., tribal courts, Puerto Rico, US Virgin Islands, and Northern Mariana Islands, including Guam) for caregivers who resided outside of Wisconsin at any time during the three years preceding the date of the search. (See **Other Resources – 3.**)

The Department has determined that a good faith effort requires the entity to follow the process established in the other state to obtain complete background check information. Contact information for other states can be found by using a search engine, such as Google, to search the Department of Justice (DOJ) websites in other states and to follow their process(es) for requesting background check information. If the caregiver resided in a closed record state, the entity may request the caregiver to provide the out-of-state record.

The entity must document their attempts to obtain the information. The law does allow entities to contract with other agencies to obtain the caregiver background check results. The same good faith effort applies to a contract agency obtaining criminal history information from another state.

2.2.3.3

Military Discharge Papers

DHS 12.08

The entity must obtain a copy of the military discharge papers (DD-214) from a caregiver who was discharged from the military within the three years preceding the search. An entity must obtain additional information when a discharge is other than “honorable”. (See **4.2.0.** and **4.2.1.1.**)

Military discharge papers are provided to military personnel upon discharge and should be available from the employee/applicant. Veterans who do not have their DD-214 may obtain a copy of their discharge papers by submitting a Standard form 180, **Request Pertaining to Military Records**, found at:

http://www.archives.gov/facilities/mo/st_louis/military_personnel_records/standard_form_180.html

They may also contact their local County Veterans Service Officer (CVSO) for assistance in obtaining copies of their discharge papers.

2.2.3.4

BID Form Retention

s. 50.065(6)(am)

The **Background Information Disclosure** (DHS form F-82064) remains with the entity, either on file at the entity or in a place where it is readily available for inspection by authorized state personnel for a minimum of four (4) years or until the next background check is done. BID forms for employees or contractors should not be submitted to any state agency.

Background Information Disclosure (BID) Provision

s. 50.065(6)(am)

2005 Wisconsin Act 351 amends 50.065(6)(am), Wis. Stats., relating to the Background Information Disclosure (BID) form. The amendment makes completion of the BID form optional at the four-year renewal time period, if the conditions below are met. See:

<http://docs.legis.wisconsin.gov/2005/related/acts/351.pdf>

Under this provision, an entity does not have to require that their caregivers complete a BID form every four years **IF** the entity has a written self-disclosure policy **AND** the entity reminds their caregivers of that policy annually.

If an entity chooses to implement this provision, the entity must do the following:

- Ensure that all caregivers complete a bid form at the time of hire.
- Complete a caregiver background check (DOJ and DHS/DSPS information) at the time of hire and every four years thereafter.
- Develop a written self-disclosure policy that notifies caregivers that they must disclose, in writing, any changes to the information included on the BID form, including:
 - Convictions of any crimes
 - Substantiated findings of abuse, neglect, or misappropriation
 - Current investigations related to abuse, neglect, or misappropriation
 - Professional credential restrictions, limitations, or revocations
 - Program licensure limitations, revocations, or denials
 - Discharge from any branch of the US Armed Forces, including any reserve component
 - Residency outside the state of Wisconsin
 - Rehabilitation Review requests
- Remind all caregivers of the requirements of the written self-disclosure policy on an annual basis. DQA recommends that this annual reminder be given via written notification to every caregiver. It may be helpful to include in the annual reminder the penalties for failure to self-disclose.
- Require caregivers to disclose any changes to the information they included on the BID form, in writing, to their immediate supervisor as soon as possible, but no later than the person's next working day.

Reporting Changes and Individual Sanctions

It is important to note that, regardless of whether an entity has a written self-disclosure policy which they use to remind their caregivers annually, Chapter DHS 12.07, Admin. Code, requires an entity to include in its personnel or operating policies a provision that requires caregivers to notify the entity as soon as possible, but not later than the person's next working day, when any of the following occurs:

- The person has been convicted of any crime.

- The person has been or is being investigated for any act, offense, or omission, including abuse, neglect, or misappropriation.
- The person has a substantiated finding of abuse, neglect, or misappropriation.
- The person has been denied a license or had their license restricted or otherwise limited.

Therefore, all entities should remind their caregivers that a person who is required to complete a BID form, or who is subject to an entity's self-disclosure policy, may be subject to sanction if the person:

- Fails to complete and submit the BID form to the appropriate agency or entity;
- Knowingly gives false information or knowingly omits information on the BID form or as part of the self-disclosure policy; or
- After submitting a BID form, subsequently fails to report any information about a conviction for a crime or other act or offense requested on the BID, or as part of the self-disclosure policy.

2.2.4

Wisconsin Criminal History Record Request (DJ-LE-250/250A)

The next step in the caregiver background check process is for the entity to verify the information on the BID form by submitting a **Wisconsin Criminal History Record Request** form (DJ-LE-250 or DJ-LE-250A) to the Department of Justice Crime Information Division (See **Other Resources – 3.**) or requesting a caregiver background check online. (See **2.2.4.1.**)

The entity must check the "*Caregiver – General*" box on the Criminal History Record Request form to obtain full information for a caregiver background check. Placing an "x" in the "*Caregiver – General*" request purpose box is the trigger that generates the electronic search of the DHS and DRL databases, also known as the Integrated Background Information System (IBIS).

The Crime Information Division (CIB) is required under Wisconsin law to charge a fee for criminal history searches. Chapter 165.82, Wis. Stats., says that the search cost is determined as follows for mail or fax requests:

- Non-profit organization \$ 12.00
- Governmental agency \$ 12.00
- Any other requester \$ 12.00

s. 50.065(8)

Plus \$3.00 for the DHS and DSPS database query.

Entities may incur other costs when additional research is required, such as following up with federal and local law enforcement agencies, county clerks of courts, tribal courts, or other states.

Entities must send the **Criminal History Record Request** (form DJ-LE-250 or 250A) to the Department of Justice, Crime Information Division with the required fees and a self-addressed stamped envelope.

2.2.4.1

DOJ Internet Checks

Customers who conduct regular record requests may apply to have an account with the Crime Information Division. Agencies will be billed monthly for their transactions. If you wish to apply for an account, complete a Record Check Account Application found at: <http://www.doj.state.wi.us/dles/cib/cib-forms>

Upon application approval, the Crime Information Division will notify you of your account number. You need to use this account number when submitting record requests and payments. A copy of the request forms with your account number will be sent to you. Make copies of these forms and use them to submit record requests.

The Online CIB Record Check System found at <http://wi-recordcheck.org/> makes requests available over the internet for account customers or by using a Master Card or Visa. Account customers must use your account number and a PIN to enter the site. Contact the Record Check Unit to obtain your PIN. CIB is required under Wisconsin law to charge a fee for criminal history searches. Chapter 165.82, Wis. Stats., states that the search cost is determined as follows for internet requests:

- Non-profit organization \$ 7.00
- Governmental agency \$ 7.00
- Any other requester \$ 7.00

The online record check system pages require "frames" and "JavaScript". Your browser must be able to support these features and these features must be enabled. Microsoft Internet Explorer version 5.0 or higher and Netscape Navigator version 5.0 or higher support all system requirements. Some customized browsers do not support all system requirements and the online record check system may not function optimally using these browsers.

Searches conducted over the internet will return the best possible match, if any, based on the information you enter. If you have any questions regarding the online record check system, send an email to: intch@doj.state.wi.us

See 4.2.1.2 for the Circuit Court Automation Program (CCAP) information.

2.2.5

Response to Wisconsin Criminal History Record Request

s. 50.065(2)(b)

After submitting the *Wisconsin Criminal History Record Request* or an online request, the entity will receive **two** responses:

- A "no record found" response or a criminal record transcript (Wisconsin Identification Data) from the DOJ Crime Information Division **and**
- A letter from DHS containing DHS and Department of Safety and Professional Services (DSPS) information about the person (Response to Caregiver Background Check, DHS form F-82065)

2.2.5.1

Wisconsin Identification Data

s. 50.065(2)(b)1

The Wisconsin Identification Data is a report of arrests or convictions within the state of Wisconsin from records maintained by the DOJ. Entities must examine this information for arrest and convictions and make employment decisions based on the results. (See **Chapter 4.**)

2.2.5.2

Response to Caregiver Background Check (DHS form F-82065)

s. 50.065(2)(b)2-5

If the correct "caregiver request purpose box" on the DOJ criminal history search form was checked, the letter from DHS should follow the DOJ search results within one to two weeks or be available online.

The Response to Caregiver Background Check, also referred to as the IBIS letter, is a letter from DHS that provides the following information:

- Caregiver findings of abuse or neglect of a client or misappropriation of a client's property in Wisconsin
- Caregiver findings of abuse or neglect of a client or misappropriation of a client's property in another state (if known)
- Denials or revocations of operating licenses for adult programs
- Denials or revocations of operating licenses for child programs
- Rehabilitation review findings
- Status of professional credentials, licenses, or certifications maintained by the Department of Safety and Professional Services

Entities must examine this information for findings of misconduct by a governmental agency and make employment decisions based on the results. (See **Chapter 4.**)

Entities can ignore information on anyone other than the person for whom they requested a background check. Questions regarding any of the information on the IBIS letter should be directed to the appropriate phone number listed on the letter.

2.2.6 Incomplete/Incorrect Information

2.2.6.1 Department of Justice (DOJ) Response

If an entity does not receive a **response from DOJ**, contact the Criminal Information Division at (608) 266-7780.

2.2.6.2 Department of Health Services (DHS) Letter

If an entity does not receive the **letter from DHS**, the entity should check to see if it was sent to a different address in the organization, such as a corporate office or an account billing address. Inquiries about missing DHS letters may be directed to the Office of Caregiver Quality at (608) 261-8319.

The DHS letter containing DHS and DSPS findings cannot be re-sent unless one of the "caregiver" request purpose boxes was checked on the original DOJ form.

If there is an **error in the Response to Caregiver Background Check letter (incorrect name, DOB, SSN)** that the entity receives from DHS, re-submit the original Wisconsin Criminal History Record Check (DJ-LE-250 or DJ-LE-250A) with a self-addressed stamped envelope to:

Crime Information Division (CIB)
ATTN: Record Check Unit
P.O. Box 2688
Madison, WI 53701-2688

If the Crime Information Division made the error, there is no fee for re-processing the request. If the error was due to an incorrect or illegible form, the entity will be required to pay the processing fee again.

2.2.6.3 Department of Safety and Professional Services (DSPS) Information

If the information under **Status of Professional Credential(s), License(s) or Certificate(s) is incorrect or incomplete**, an entity may query this information on the DSPS internet site at <http://dsps.wi.gov/home> by clicking on "Online Services" and the "License Lookup". The information found there is consistent with the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) and the National Committee for Quality

Assurance (NCQA) standards for primary source verification. Entities may print out the information and file it with the background check information.

For additional information related to licensing of health professionals, contact the Department of Safety and Professional Services at (608) 266-2112.

2.2.7 Complete Caregiver Background Check

At a minimum, a **complete caregiver background check** completed by DQA consists of the following four documents:

1. A completed DHS form F-82064, Background Information Disclosure (BID);
2. A completed DHS form F-82069;
3. A response from the Department of Justice (DOJ), either
 - A “no record found” response **or**
 - A criminal record transcript; **and**
4. A “Response to Caregiver Background Check” letter from the Department of Health Services (DHS) that reports the person’s status, including administrative finding or licensing restrictions.

Other documentation must be provided to DQA when information is needed to complete the background check, such as other state’s conviction records, other U.S. jurisdiction conviction records, military discharge papers, arrest, and conviction disposition information from local clerks of courts or tribal courts. (See 3.2.1.1., 3.2.1.2., and Chapter 4.)

2.2.8 Background Check Record Retention

s. 50.065(2)(d)
DHS 12.10

Entities must maintain the background check documents for each caregiver. The entity may determine where and how these records are maintained, but the **records must be readily available to DQA staff** upon request. In general, caregiver background checks must be retained by the entity, to document compliance with the law. It is recommended that all documents necessary for a complete caregiver background check be filed together for each employee or contractor.

DHS 12.04(1)

Entities are not required to have background checks on-site when they are retained at the entity’s central location, such as the corporate office. For temporary caregiver employees and for students completing clinicals at covered entities, the educational institution and temporary employment agency may retain the background check records when there is a written letter of agreement between the school or agency and the entity to do so. (See 2.2.2.)

In all cases where records are kept off-site, all conviction information regarding an eligible employee must be disclosed to the receiving entity so they can determine if any conviction may be substantially related to the duties of the job. (See 4.3.0.) Caregiver background check records must be readily available to DQA staff even if kept off-site.

Complete caregiver background checks for all current caregivers of an entity must remain on file and must be redone at least every four years. For persons who terminated employment or students who completed their educational program and clinicals, the records may be maintained in accordance with the records retention policy of the entity, school, or temporary employment agency.

Example

Susan C. was hired at a home health agency in September 2011, at which time she completed a Background Information Disclosure (BID) form. The home health agency (HHA) proceeded to obtain a complete caregiver background check. Susan resigned in January 2012 and was rehired by the same home health agency in April 2012.

The HHA properly had Susan complete a new BID form to verify that no changes had occurred. The new BID is filed with the complete caregiver background check information obtained in September 2011, which is valid until September 2015.

2.3.0

SHARING CAREGIVER BACKGROUND CHECK RESULTS

s. 50.065(2)bg

Criminal history records and caregiver background checks are public records. The results of the background checks may be shared with the applicant, employee, or student.

In cases where the background checks have been conducted within the previous four years, entities are required to share the background checks results (i.e., the DOJ criminal history response, DHS letter, other documentation) with other entities on request. The caregiver must complete a new BID form for the new employer.

If an entity has reason to believe that any information obtained from another entity is no longer accurate, a new caregiver background check must be completed.

2.4.0

NURSE AIDE REGISTRY

Employers must query the Wisconsin Nurse Aide Registry at www.pearsonvue.com or call the Registry toll free at (877) 329-8760 to verify a nurse aide's employment eligibility to work in federally certified or state licensed facilities.

The Registry does not track criminal convictions, which may bar a caregiver from employment. Entities must complete caregiver background checks to obtain this information on all caregivers. After the initial background check at the time of employment or contracting, entities must conduct new caregiver background checks at least every four years, or at any time within that period that an entity has reason to believe new checks should be obtained.

2.5.0

STAFF SELF-REPORTING REQUIREMENTS

DHS 12.07(1)

An entity must include in its personnel or operational policies a provision requiring employees, contractors, or non-client residents to notify the entity as soon as possible, but no later than the person's next working day when they have been convicted of any crime or have been or are being investigated by any governmental agency for any act or offense.

2.6.0

SANCTIONS

s. 50.065(4)

An entity may be subject to sanction if it fails to adhere to the provisions of the Caregiver Law. A person may be subject to sanction if they provide false information on a BID form as

required under the Caregiver Law or if they fail to report new convictions, findings, or license limitations.

2.6.1

Sanctionable Entity Actions

DHS 12.05(1)

An entity may be subject to sanctions if they:

- Hire, employ, or contract with a caregiver or permit a non-client resident to reside at the entity when the entity knew or should have known that the person is barred from doing so; or
- Violate any provision of initial background information gathering or periodic background information gathering required under the law.

2.6.2

Entity Sanctions

DHS 12.05(2)

If an entity commits any of the actions listed in **2.6.1**, any or all of the following sanctions may be imposed:

- A forfeiture not to exceed \$1,000;
- A requirement that the entity submit a written corrective action plan specifying corrections the entity will make to the identified personnel screening practices needing correction and that the entity implement the plan;
- At entity expense, attendance at agency-designated personnel screening training or other appropriate training;
- Specific conditions or limitations placed on the license, certification, or registration, including denial, revocation, nonrenewal, or suspension of regulatory approval issued by the department; and/or
- A requirement that the entity use a temporary employment agency for screening and hiring personnel.

2.6.3

Sanctionable Individual Actions

s. 50.065(6)(c)
DHS 12.05(3)

A person who is required to complete a Background Information Disclosure (BID) form may be subject to sanction if the person:

- Fails to complete and submit the BID form to the appropriate agency or entity;
- Knowingly gives false information or knowingly omits information on the BID form; or
- After submitting a Background Information Disclosure form, subsequently fails to report any information about a conviction for a crime or other act or offense requested on the BID.

2.6.4

Individual Sanctions

DHS 12.05(4)

If an individual commits any of the actions listed in **2.6.3**, any or all of the following sanctions may be imposed:

- A forfeiture not to exceed \$1,000;
- Denial or revocation of regulatory approval;
- Denial of eligibility to reside at the entity;
- 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.

CHAPTER 3 ENTITY OWNER AND NONCLIENT RESIDENT BACKGROUND CHECK PROCESS

3.1.0 ENTITY OWNERS AND NONCLIENT RESIDENTS

Just as entities are required to conduct caregiver background checks on employees, the Division of Quality Assurance (DQA) is required to conduct caregiver background checks on all entity owners, some board members, and non-client residents of DQA regulated entities.

s. 50.065(1)(ag)b

The definition of a caregiver includes a person who is one of the following:

- The owner (license holder/legal representative) of an entity, whether or not they have regular, direct contact with clients; or
- A board member or corporate officer who has regular, direct contact with the clients served.

s. 50.065(1)(cn)

The law also covers anyone who is a non-client resident age 10 or older who has regular, direct contact with clients.

3.1.1

Owners/License Holders

The requirement for DQA performing background checks applies to the owner/license holder of an entity whether or not they have regular, direct contact with clients.

3.1.1.1

Nongovernmental Entities

If the owner/license holder is a corporation or other type of business that does not have a single owner (e.g., domestic corporation, non-stock corporation, partnership, limited liability company, etc.), then the organization **must** designate one principal officer to legally represent the organization for the purposes of fulfilling the background check requirements.

The legal representative must submit a **Background Information Disclosure (BID)** form and a **BID Appendix** form (see **Other Resources - 1**) whether or not they have regular, direct contact with clients.

Example

Doris M. is the Chief Executive Officer (CEO) of a corporation which owns a nursing home. She has been designated as the legal representative of the organization for the purpose of caregiver background check requirements. Although Doris lives in Minneapolis and rarely visits the nursing home facility in Milwaukee, she is considered the entity "owner" and is required to submit the BID, BID Appendix, and fee to DQA.

3.1.1.2

Governmental and Tribal Entities

An individual (e.g., the entity administrator designated by the governmental agency or tribe who operates the entity, whether or not the person has regular, direct contact with clients) is required to submit the BID and BID Appendix.

3.1.2

Principal Officers, Corporation, or Board Members

Principal officers, corporation, or board members of the business organization who have regular, direct contact with clients are required to submit the BID and BID Appendix.

3.1.3

Non-Client Residents

A non-client resident is defined as a person 10 years of age or older who is not a client of the entity but who resides at the entity and is expected to have regular, direct contact with entity clients. Background checks must be completed on any non-client resident who has regular, direct contact with entity clients.

s. 50.065(2)(bd)

DQA is not required to complete full caregiver background checks on non-client residents under age 18 if their **completed *Background Information Disclosure*** (BID) form does not indicate any convictions of a crime or findings by a government agency that require a Rehabilitation Review or license limitations. However, DQA may choose to complete a full caregiver background check on a minor. A parent or guardian may sign the BID form for a minor.

Example

Eddie B. is the 13-year-old son of Jackie B., a CBRF owner/operator. Eddie resides in a private residence area of the CBRF facility and has daily contact with the CBRF clients. Therefore, Eddie is a non-client resident and must complete the Background Information Disclosure (BID) form.

His BID does not indicate any offenses that prohibit him from residing at the facility, so DQA is not required to submit a criminal history record request to the Department of Justice.

3.2.0

BACKGROUND CHECK PROCESS

s. 50.065(3)(a)

The Division of Quality Assurance (DQA) must complete caregiver background checks on all owners/license holders, principal officers, corporation or board members, and non-client residents at least every four years.

3.2.1

Background Information Disclosure (DHS form F-82064) and Appendix (DHS form F-82069)

s. 50.065(6)(a)

When contacted to do so by the Division of Quality Assurance, entities must have each applicable person complete a:

- BID form and
- BID Appendix form

s. 50.065(6)(b)

These completed forms must be submitted to DQA with a processing fee for each person.

3.2.1.1

Military Discharge Papers

DHS 12.08

The entity must obtain a copy of the military discharge papers (DD-214) from a person who was discharged from the military within the three years preceding the search and submit the DD-214 with the BID and BID Appendix forms to DQA.

3.2.1.2

Out-of-State Records Search

s. 50.065(2)(bm)

A person who resided in a state other than Wisconsin or other U.S. jurisdiction (e.g., tribal courts, Puerto Rico, US Virgin Islands, and Northern Mariana Islands, including Guam) at any time during the three years preceding the date of the search must submit a copy of their criminal history information from that state to DQA.

3.2.1.3 *BID Form Retention*

DQA will retain the person's completed BID and BID Appendix forms with the completed caregiver background check (see 3.2.4. and 3.2.5.).

3.2.2 **Wisconsin Criminal History Record Request**

DQA will do a criminal history search by submitting a request via the internet to the Department of Justice (DOJ) on all required persons.

3.2.3 **Response to Wisconsin Criminal History Record Request**

s. 50.065(2)(am)

DQA will receive two responses to the caregiver background check request:

1. A "no record found" response **or** a criminal record transcript (Wisconsin Identification Data) from the DOJ Crime Information Division; **and**
2. A Response to Caregiver Background Check letter (DHS form F-82065) from DHS containing DHS and DSPS information about the person.

3.2.3.1 *Wisconsin Identification Data*

s. 50.065(2)(am)1

The Wisconsin Identification Data is a report of arrests and/or convictions within the state of Wisconsin from records maintained by the DOJ. DQA must examine this information for arrest and convictions and make licensing and residency decisions based on the results. (See **Chapter 4.**) A person who has a report of arrests or convictions may be required to submit additional documentation to DQA.

3.2.3.2 *Response to Caregiver Background Check, DHS form F-82065*

s. 50.065(2)(am)2-5

The Response to Caregiver Background Check is a DHS letter stating whether the individual has any findings of caregiver misconduct by various state agencies, including information maintained by the Department of Safety and Professional Services regarding the status of the person's credentials, as applicable.

DQA must examine this information for findings of misconduct by a governmental agency or licensing limitations and make licensing and residency decisions based on the results. (See **Chapter 4.**)

3.2.4 **Complete Caregiver Background Check**

At a minimum, a **complete caregiver background check** completed by DQA consists of the following four documents:

1. A completed DHS form F-82064, Background Information Disclosure (BID);
2. A completed DHS form F-82069, Appendix;
3. A response from the Department of Justice (DOJ), either
 - A "no record found" response **or**
 - A criminal record transcript; **and,**
4. A "Response to Caregiver Background Check" letter from the Department of Health Services (DHS) that reports the person's status, including administrative finding or licensing restrictions.

Other documentation must be provided to DQA when information is needed to complete the background check, such as other state's conviction records, other U.S. jurisdiction conviction records, military discharge papers, arrest and conviction

disposition information from local clerks of courts or tribal courts. (See **3.2.1.1**, **3.2.1.2**, and **Chapter 4**.)

3.2.5 Background Check Record Retention

DQA will maintain the documents listed in 3.2.4 for each owner, board member, and non-client resident as defined in **3.1.0**.

3.3.0 LICENSURE AND RESIDENCY LIMITATIONS

s. 50.065(4m)(a)

A finding by a governmental agency or a conviction record, depending on the nature of the conviction (see **Chapter 4**), may result in:

- Denial, revocation, or suspension of a license, certificate of approval, or registration of a person to operate an entity; or
- Denial of residency of a non-client resident.

The offenses listed on the Offenses List (See **Other Resources – 4**.) will prohibit licensure, certification, or registration of a person to operate an entity or will prohibit residence of a non-client resident at the entity, unless approved through the Rehabilitation Review process. (See **Chapter 5**.)

3.4.0 SELF REPORTING REQUIREMENTS

DHS 12.07(2)

Entities must notify DQA no later than the next business day when an owner/license holder, administrator, board member, or non-client resident has been convicted of any crime or has been or is being investigated by any governmental agency for any act or offense.

Entities must also notify DQA no later than the next business day if:

- There is a change in ownership, administration, or board membership;
- A new non-client resident moves in to the facility; or
- An existing non-client resident turns 10 years of age or turns 18 years of age.

DHS 12.07(3)

A completed BID and BID Appendix for the person must be submitted to DQA within 10 business days of the change.

CHAPTER 4 FINDINGS, CONVICTIONS AND LIMITATIONS

4.1.0 FINDINGS AND CONVICTIONS

s. 50.065(4m)(b)

Both entities and DQA must closely examine the results of the caregiver background checks for criminal arrests and convictions or findings of misconduct by a governmental agency. Entities must make employment decisions and DQA must make licensing and residency decisions based on the results of the background checks in accordance with the requirements and prohibitions in the law.

A finding by a governmental agency or a conviction record, depending on the nature of the conviction, may result in:

- A bar to employment as a caregiver;
- Denial, revocation, or suspension of a license, certificate of approval, or registration of a person to operate an entity; or
- Denial of residency of a non-client resident.

4.1.1 Offenses Affecting Caregiver Eligibility

Unless the person is approved through the Rehabilitation Review process (See **Chapter 5.**), the offenses listed in the Offenses List (See **Other Resources – 4.**) prohibit:

- Employment as a caregiver in DQA regulated entities
- Licensure, certification, or registration of a person to operate an entity
- Residence of a non-client resident

4.1.2 Other Convictions

s. 50.065(5m)

Only those crimes and findings by governmental agencies on the Offenses List (see **Other Resources - 4**) and comparable crimes and offenses from other states or other U.S. jurisdictions are bars to employment, regulatory approval, and non-client residency.

Any conviction not on the Offenses List may be determined to be substantially related to the duties or the circumstances of the job. This may result in:

- Refusal to hire a candidate for that reason, although an employer is not required to bar the person from employment;
- Denial, revocation, or suspension of a license, certificate or approval, or registration; or
- Denial of residency of a non-client resident.

4.1.3 Convictions in Other States

For convictions in other states or U.S. jurisdictions, a determination must be made whether there is a comparable crime listed in the Offenses List and the corresponding consequence or condition must be applied.

Example

Felony abuse of a vulnerable adult in another state is comparable to s. 940.285(2)(b) 1. or 2., Wis. Stats., Abuse of Vulnerable Adults in Wisconsin, which is listed on the Offenses List as a crime subject to the Rehabilitation Review process.

Example

An out-of-state reckless driving conviction has no comparable crime on the Wisconsin Offenses List. An entity or DQA may consider whether such a conviction is substantially related to the duties of the job.

4.1.4

Dismissed Charges

A criminal record that indicates “not guilty”, “no prosecution”, “dropped”, or “dismissed” means that the person was not convicted of the crime for which they were charged.

Convictions that have been reported to and are on file at the DOJ Crime Information Division cannot be expunged from the DOJ Crime Information Division (CIB) database, even if they can be expunged from the County Clerk’s office because they are “law enforcement records” rather than “court records”.

4.2.0

ADDITIONAL REQUIRED INFORMATION

s. 50.065(2)bb

Additional information **must** be obtained when:

1. The person reports a conviction for a crime on the Offenses List (see **Other Resources - 4**) that does not appear on the DOJ report to the criminal history record request;
2. The DOJ report does not provide a conclusive disposition on a criminal charge for a crime on the Offenses List;
3. The BID or DOJ response indicates a conviction of
 - Misdemeanor battery s. 940.19 (1), Wis. Stats
 - Battery to an unborn child s. 940.195, Wis. Stats
 - Battery, special circumstances s. 940.20, Wis. Stats
 - Reckless endangerment s. 941.30, Wis. Stats
 - Invasion of Privacy s. 942.08, Wis. Stats
 - Disorderly conduct s. 947.01, Wis. Stats
 - Harassment s. 947.013, Wis. Statswhere the conviction occurred five years or less from the date on which the information was obtained; or,
4. The military discharge was other than “honorable”.

4.2.1

Obtaining Additional Information

If the person’s circumstances meet the criteria described in 4.2.0, a good faith effort **must** be made to obtain disposition information, including conviction records, from the appropriate jurisdiction such as the county clerk of courts, tribal jurisdiction, armed services branch, etc.

An entity may also wish to obtain additional information for other offenses than those on the Offenses List when:

- The person reports a conviction for a crime that does not appear on the DOJ report to the criminal history record request;

- The DOJ report does not provide a conclusive disposition on a criminal charge.

4.2.1.1

County Clerk of Courts/Tribal Courts/Military Courts

When a person has a conviction record listed in 4.2.0, the **criminal complaint and judgment of conviction** must be obtained from the County Clerk of Courts or Tribal Courts office in the county where the person was convicted.

For a list of Clerks of Court by county, see:

<http://www.wicourts.gov/contact/docs/clerks.pdf>

When a person has a discharge status other than honorable, additional information regarding the nature and circumstances of the discharge must be obtained from the armed forces branch.

For contact information, see the National Personnel Records Center, Military Records Request at: <http://www.archives.gov/st-louis/military-personnel/standard-form-180.html>

4.2.1.2

Circuit Court Automation Program (CCAP)

Arrest and conviction information is also available at the Wisconsin Circuit Court Automation Program web site at: <http://wcca.wicourts.gov/index.xsl>

This web site provides Criminal Summary Reports for most Wisconsin counties. It is an easy-to-use system that allows access with the individual's first and last name. These records include the individual's date of birth, address, charge description, associated statute, severity (felony or misdemeanor), disposition, disposition date, case status, and more. If it does not contain details about the case, the entity may need to make a substantially related determination (see **4.3.0**).

A search on CCAP that fails to find a criminal record does not mean that the person does not have a record. Information obtained via the Circuit Court Automation Program cannot be used in lieu of the caregiver background checks, which are required by law.

4.2.2

Juveniles

Adults are "convicted of crimes" and have criminal records. Juveniles under age 17 are "adjudicated delinquent" and have juvenile records. Juvenile records may be released with a parent or guardian's authorization. Juvenile records are not otherwise available and entities and DQA are not required to obtain them.

However, conviction records of juveniles who are waived into and convicted in adult court are public records and may be accessed through the means described in **4.2.1.1**.

4.2.3

Fingerprint Cards

s. 50.065(2)(bm)

Entities and DQA are authorized 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. The Department of Justice (DOJ) may submit the fingerprint cards to the Federal Division of Investigation (FBI) for the purposes of verifying the identity of the person fingerprinted and obtaining records of his or her criminal arrest or convictions. This procedure allows for conviction information to be obtained from closed record states and provides for a more comprehensive criminal history check.

The FBI has a database of over 32 million criminals, maintained at its facility in Clarksburg, WV. Like the Crime Information Division (CIB) criminal repository, the FBI database is based on fingerprint arrest records and court dispositions, but contains records from all

U.S. states and territories. The FBI's criminal index system provides a single source of inquiry for criminal records, nationwide.

CIB provides access to the FBI system for law enforcement agencies in Wisconsin. Law enforcement agencies are authorized to use the FBI's information for criminal justice purposes. For the most part, the general public is not authorized to have access to the FBI data. Exceptions include public housing agencies for screening tenant applications, and caregivers who submit applicant fingerprint cards to CIB.

Contact the DOJ Crime Information Division at (608) 267-5764 to request the application materials to receive FBI information.

4.3.0

SUBSTANTIALLY RELATED CRIMES

s. 50.065(5m)

An entity may refuse to hire and DQA may revoke or refuse regulatory approval or permission to reside at a facility if the person has been convicted of an offense that is not on the Offenses List, but is, in the estimation of the entity or DQA, substantially related to the duties or circumstances of the job or residency.

Example

John A. applies for a job at a home health agency. His Background Information Disclosure (BID) lists a charge of theft. The home health agency obtains the criminal conviction and judgment of conviction from the county clerk of courts and reviews the facts of the incident which indicate that John stole cash while working as a private pay caregiver.

The home health agency decides that the circumstances of John's offense substantially relate to the duties of the job for which John has applied and declines to hire him.

4.3.1

Guidelines for Substantially Related Crimes

DHS 12.06

To determine whether a crime is substantially related to the care of a client, some of the factors that may be considered are those:

- In relation to the job,
- In relation to the offense, and
- In relation to the person.

4.3.1.1

In Relation to the Job

DHS 12.06(1)

The following factors may be considered in relation to the job:

- The nature and scope of the job's client contact
- The nature and scope of the job's discretionary authority and degree of independence in judgment relating to decisions or actions that affect the care of clients
- The opportunity the job presents for the commission of similar offenses
- The extent to which acceptable job performance requires the trust and confidence of clients or their parent or guardian
- The amount and type of supervision received in the job

4.3.1.2

In Relation to the Offense

DHS 12.06(2)

The following factors may be considered in relation to the offense:

- Whether intent is an element of the offense
- Whether the elements or circumstances of the offense are substantially related to the job duties
- Any pattern of offenses
- The extent to which the offense relates to vulnerable clients
- Whether the crime involves violence or threat or harm
- Whether the crime is of a sexual nature

4.3.1.3

In Relation to the Person

DHS 12.06(3)

The following factors may be considered in relation to the person:

- The number and type of offenses for which the person has been convicted
- The length of time between the conviction or convictions and the employment decision
- The person's employment history, including references, if available
- The person's participation in or completion of pertinent rehabilitation programs
- The person's probation or parole status
- The person's ability to perform or to continue to perform the job consistent with the safe and efficient operation of the program and the confidence of the clients served including, as applicable, their parents or guardians
- The age of the person on the date of conviction or dates of conviction

Written documentation should be maintained regarding the determination of whether or not a person's crime is substantially related to the care of a client in the employment, regulatory approval, or residency decisions.

A person who is refused employment or terminated from employment and believes discrimination may have occurred may file a complaint with the Department of Workforce Development, Division of Equal Rights (see **4.4.0.**).

4.3.2

Municipal or County Ordinance Violations

Municipal and county ordinance violations are not "criminal" convictions and the Offenses List does not include municipal or county ordinance violations. However, ordinance violations may appear on the Department of Justice criminal background report if local officials reported the original arrest to DOJ or if a person may have disclosed such a violation or corresponding forfeiture on the Background Information Disclosure form. The criminal record may indicate "non-criminal" after the charge or list ordinance numbers that do not correspond to statutory crime numbers.

4.3.3

Actual Conviction vs. Original Charge

It is the actual conviction that determines whether someone must apply for and receive DHS approval through the Rehabilitation Review process (see **Chapter 5**). However, in determining whether such a conviction is substantially related to the duties of the job, the circumstances behind the conviction may be considered.

For example, in the case of an originally charged serious crime that was plea-bargained down, the nature of the person's behavior as well as the circumstances of the arrest and conviction may be considered in making a decision.

4.3.4 Pending Charges

The Caregiver Law does not cover pending criminal charges which are covered under the Fair Employment Law. An entity can consider pending charges substantially related (see 4.3.1.) when making a hiring decision.

However, it is not permissible under the Fair Employment Law to terminate an existing employee because of a pending criminal charge. An employee who is charged with a crime that is substantially related to the duties of the job may be suspended or removed from a caregiver position or experience other employment action as determined by the employer or DQA.

If the employee is eventually convicted of a crime that is substantially related to the duties of the job, the employer may dismiss the employee at that time.

4.4.0 FILING A COMPLAINT

DHS 12.06 - Annot.

A person who has been refused employment or terminated from employment and believes that discrimination has occurred, may file a complaint under s. 111.335, Wis. Stats., by calling (608) 266-6860 or writing the:

Division of Equal Rights
Department of Workforce Development (DWD)
P.O. Box 8928
Madison, WI 53708-8928

A person who has been refused regulatory approval or who has had their regulatory approval revoked and believes that discrimination has occurred may contact their licensing agency.

For more information regarding arrest and conviction records under the law, see Equal Rights Publication ERD-7609-P from DWD at:

http://www.dwd.state.wi.us/er/discrimination_civil_rights/publication_erd_7609_p.htm

CHAPTER 5 REHABILITATION REVIEW PROCESS

5.1.0 REHABILITATION REVIEW PURPOSE

s. 50.065(5)
DHS 12.03(18)

All caregivers with an offense on the Offenses List:

- Criminal conviction,
- Finding of misconduct entered on the Wisconsin Caregiver Misconduct Registry, or
- Finding of child abuse or neglect finding,

may request a Rehabilitation Review with the Department. An approval through the Rehabilitation Review process allows a caregiver to work in a state-regulated facility, such as a state licensed hospital, home health agency, or community-based residential facility.

The Rehabilitation Review is an opportunity for a caregiver to provide clear evidence that a repeat of the conduct that led to their conviction is not likely and that clients will remain safe under their care.

Federal regulations require that nurse aides with a finding of caregiver misconduct be permanently barred from working in any capacity in federally regulated nursing homes and may be barred from working in Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICFs/IID). The Rehabilitation Review process cannot change this permanent bar.

5.1.1 Offenses Affecting Caregiver Eligibility

The Offenses List includes serious convictions, as well as governmental findings, that require the person to apply to the Department for a Rehabilitation Review to be eligible to work as a caregiver, to receive regulatory approval, or to reside in an entity regulated by DHS. (See **Other Resources – 4.**)

5.2.0 REHABILITATION REVIEW PROCEDURES

DHS 12.12(2)(a)

A caregiver or a non-client resident who has:

- Committed a crime on the Offenses List,
- A finding of misconduct entered on the Wisconsin Caregiver Misconduct Registry, or
- A child abuse or neglect finding,

may apply for a Rehabilitation Review to seek approval to work as a caregiver, obtain regulatory approval, or reside in an entity regulated by DHS.

DHS 12.12(2)(b)

Entities are required to give employees information on Rehabilitation Review eligibility criteria and on how to obtain the application. DQA must give this information to a person seeking regulatory approval or non-client residency. (See **Rehabilitation Review Process of Wisconsin's Caregiver Program**, DQA publication, P-63160.)

5.2.1 Application Procedures

DHS 12.12(3)

The applicant must complete and sign a **Rehabilitation Review Application**, EXS form F-83263, with attachments (see **Other Resources - I** or <https://www.dhs.wisconsin.gov/caregiver/forms.htm>) and submit them to the DHS Office of Legal Counsel. Incomplete applications will be denied unless good cause exists for failure to submit a complete application.

Upon receipt of a complete application, DHS will notify the applicant by mail when and where the Rehabilitation Review Panel will meet. The applicant may be asked to provide additional information.

5.2.2

Panel Review Meeting

DHS 12.12(4)

Although the applicant is not required to appear at the Rehabilitation Review Panel meeting, the applicant's appearance is recommended. Panel members may ask questions to facilitate decision making and the applicant will have an opportunity to answer their questions.

As applicable, the Rehabilitation Review Panel will consider the following:

- Personal reference checks and comments from employers, persons, and agencies familiar with the applicant and statements from therapists, counselors, and other professionals
- Evidence of successful adjustment to, compliance with, or proof of successful completion of parole, probation, incarceration, or work release privileges
- Proof that the person has not had subsequent contacts with law enforcement agencies leading to probable cause to arrest or evidence of noncompliance leading to investigations by other regulatory enforcement agencies
- Any pending or existing criminal or civil arrest warrants, civil judgments, or other legal enforcement actions or injunctions against the person
- Any aggravating or mitigating circumstances surrounding the crime, act, or offense
- Evidence of rehabilitation, such as public or community service; volunteer work; recognition by other public or private authorities for accomplishments or efforts or attempts at restitution; demonstrated ability to develop positive social interactions; and, increased independence or autonomy of daily living
- The amount of time between the crime, act, or offense and the request for Rehabilitation Review and the age of the person at the time of the offense
- Whether the person is on the sexual offender registry under s. 301.45, Wis. Stats., or on a similar registry in another jurisdiction
- A victim's impact statement, if appropriate
- Employment history, including evidence of acceptable performance or competency in a position, and dedication to the person's profession
- The nature and scope of the person's contact with clients in the position requested
- The degree to which the person would be directly supervised or working independently in the position requested
- The opportunity presented for someone in the position to commit similar offenses
- The number, type, and pattern of offenses committed by the person
- Successful participation in or completion of recommended rehabilitation, treatment, or programs
- Unmet treatment needs
- The applicant's veracity

5.2.3

Review Panel Decision

DHS 12.12(5)(a)

After the meeting, the Rehabilitation Review Panel will decide whether sufficient evidence of rehabilitation exists. Each application is handled on a case-by-case basis. The panel will issue one of the following written decisions:

- **Approved.** If the Panel finds sufficient evidence of rehabilitation, the panel will approve the Rehabilitation Review application and may specify conditions or limitations that apply to the approval.
- **Denied.** If the Panel does not find sufficient evidence of rehabilitation, the decision will provide the reasons for denial and inform the applicant of his/her right to file an appeal within 10 days of the decision.
- **Deferred.** The Panel may defer a final decision for up to six months to gather additional information or for other reasons.

A Rehabilitation Review approval does not ensure that the applicant will be hired by an entity or receive permission to reside at an entity.

Caregivers who are denied approval may not reapply for one calendar year after the date of denial.

DHS 12.12(2)(a)1

5.3.0 CONTACT INFORMATION

Individuals, who have questions about the Rehabilitation Review process, who would like more information, or who need assistance in completing the application should contact DHS or their DHS designated tribal authority.

5.3.1 *DHS Regulated Entities*

Persons seeking Rehabilitation Review approval for employment, contracted services, regulatory approval, or non-client residency in a DHS regulated entity may contact:

Department of Health Services
Office of Legal Counsel
One West Wilson Street, Room 651
P.O. Box 7850
Madison, WI 53707-7850
(608) 266-8428

5.3.2 *Tribal-operated DHS Regulated Entities*

Persons seeking Rehabilitation Review approval for employment, contracted services, or non-client residency in tribal-operated, DHS regulated entities may contact the appropriate DHS designated tribal authority.

CHAPTER 6 MISCONDUCT REPORTING AND INVESTIGATIONS

6.1.0 ENTITY INTERNAL INVESTIGATION AND REPORTING REQUIREMENTS

DHS 13

Entity internal investigation and reporting requirements for caregiver misconduct and injuries of unknown source apply a consistent method for reporting incidents of caregiver misconduct for all entities regulated by DQA, *except nursing homes*.

6.2.0 CAREGIVER MISCONDUCT

DHS 13.03(13)

Caregiver misconduct means:

- Abuse of a client, or
- Neglect of a client, or
- Misappropriation of a client's property.

6.2.1 Abuse

DHS 13.03(1)(a)

Abuse is any of the following acts committed by a caregiver:

1. An act or repeated acts by a caregiver or non-client resident, including but not limited to restraint, isolation, or confinement that when contrary to the entity's policies and procedures, when not a part of the client's treatment plan, and when done intentionally to cause harm does any of the following:
 - a. Causes or could be reasonably expected to cause pain or injury to a client or the death of a client and the act does not constitute self-defense as defined in s. 939.48, Wis. Stats.
 - b. Substantially disregards a client's rights under Chapters 50 or 51, Wis. Stats., or a caregiver's duties and obligations to a client
 - c. Causes or could reasonably be expected to cause mental or emotional damage to a client, including harm to the client's psychological or intellectual functioning that is exhibited by anxiety, depression, withdrawal, regression, outward aggressive behavior, agitation, a fear of harm or death, or a combination of these behaviors. This subdivision does not apply to permissible restraint, isolation, or confinement implemented by order of a court or as permitted by statute.
2. An act or acts of sexual intercourse or sexual contact under s. 940.225, Wis. Stats., by a caregiver and involving a client.
3. The forcible administration of medication or the performance of psychosurgery, electroconvulsive therapy, or experimental research on a client with the knowledge that no lawful authority exists for the administration or performance.
4. A course of conduct or repeated acts by a caregiver which serve no legitimate purpose and which, when done with intent to harass, intimidate, humiliate, threaten, or frighten a client, causes or could be reasonably expected to cause the client to be harassed, intimidated, humiliated, threatened, or frightened.

Examples of abuse include, but are not limited to:

- Physical abuse – hitting, slapping, pinching, and kicking;
- Sexual abuse – harassment, inappropriate touching, or assault;

- Verbal abuse – threats of harm, saying things to intentionally frighten a client; and
- Mental abuse – humiliation, harassment, and intimidation with threats of punishment or threats of depriving care or possessions.

Example

Mary S., caregiver at an adult family home, tells resident Jerry R., “I am so sick and tired of you throwing your food on the floor! If you do it again, I will not give you any pain medication today”. Jerry knocks his plate on the floor and Mary states, “Now, you did it. No pain medication for you. I don’t care how much your leg hurts”.

Later that day, Jerry says that his leg hurts and Mary states, “Too bad. Maybe next time you won’t throw your food on the floor”. Jerry’s care plan requires administration of pain medications prescribed by the physician, but Mary does not give Jerry any medication.

Abuse of a Client. The caregiver intentionally harmed the client by not providing the prescribed pain medication. This act of abuse by the caregiver is contrary to the entity’s policies and procedures and causes pain and injury to the client.

DHS 13.03(1)(b)

Abuse does not include an act or acts of mere inefficiency, unsatisfactory conduct, or failure in good performance as the result of inability, incapacity, inadvertency, ordinary negligence in isolated instances, or good faith errors in judgment or discretion.

6.2.2

DHS 13.03(14)(a)

Neglect

Neglect means an intentional omission or intentional course of conduct by a caregiver or a non-client resident including, but not limited to, restraint, isolation, or confinement that is contrary to the entity’s policies and procedures, is not part of the client’s treatment plan, and – through substantial carelessness or negligence – does any of the following:

- Causes or could reasonably be expected to cause pain or injury to a client or the death of a client
- Substantially disregards a client’s rights under either Chapters 50 or 51, Wis. Stats., or a caregiver’s duties and obligations to a client
- Causes or could reasonably be expected to cause mental or emotional damage to a client, including harm to the client’s psychological or intellectual functioning that is exhibited by anxiety, depression, withdrawal, regression, outward aggressive behavior, agitation, fear of harm or death, or a combination of these behaviors. This paragraph does not apply to permissible restraint, isolation, or confinement implemented by order of a court or as permitted by statute.

Neglect is the intentional carelessness, negligence, or disregard of policy or care plan which causes --- or could reasonably be expected to cause --- pain, injury, or death.

Example

Bobby E., a personal care worker, left three clients from a facility for the developmentally disabled (FDD) unattended in a van for approximately 45 minutes. When he returned, one of the clients was missing.

All three clients have care plans requiring 24-hour supervision. Bobby E. was aware of the care plan requirements. The missing client was located two hours later, unharmed, after the local police had been contacted to assist in the search.

Neglect of a Client. The care plan requires 24-hour supervision of these three clients. The caregiver intentionally left the clients unattended. Even though no harm was intended, the caregiver's actions could reasonably be expected to cause pain or injury to the clients.

DHS 13.03(14)(b)

Neglect does not include an act or acts of mere inefficiency, unsatisfactory conduct or failure in good performance as the result of inability, incapacity, inadvertency or ordinary negligence in isolated instances, or good faith errors in judgment or discretion.

6.2.3

Misappropriation of Property

Misappropriation of property is any of the following:

DHS 13.03(12)

- a. The intentional taking, carrying away, using, transferring, concealing, or retaining possession of a client's movable property without the client's consent and with the intent to deprive the client of possession of the property.
- b. Obtaining property of a client by intentionally deceiving the client with a false representation which is known to be false, made with the intent to defraud, and which does defraud the person to whom it is made. "False representation" includes a promise made with the intent not to perform it if the promise is a part of a false and fraudulent scheme.
- c. By virtue of his or her office, business, or employment or as trustee or bailee and having possession or custody of money, a negotiable security, instrument, paper, or other negotiable writing of a client, intentionally using, transferring, concealing, or retaining possession of money, security, instrument, paper, or writing without the client's consent, contrary to his or her authority, and with the intent to convert it to his or her own use or to the use of any other person except the client
- d. Intentionally using or attempting to use personal identifying information as defined in s. 943.201 (1)(b), Wis. Stats., or a client's birth certificate, or financial transaction card as defined in s. 943.41(1)(em), Wis. Stats., to obtain credit, money, goods, services, or anything else of value without the authorization or consent of the client and by representing that he or she is the client or is acting with the authorization or consent of the client
- e. Violating s. 943.38, Wis. Stats., involving the property of a client, or s. 943.41, Wis. Stats., involving fraudulent use of a client's financial transaction card

Examples of misappropriation include, but are not limited to:

- Theft of money, credit cards, or jewelry
- Misuse of property, such as a client's phone or other personal items, without consent

Example

Karen B., resident of a residential care apartment complex, reported her purse containing \$200 was missing and that she had last counted her money on August 15 upon her return from shopping. On August 17, she was preparing for another outing and discovered that her money and purse were missing from her top dresser drawer. She could not recall leaving her apartment door unlocked during that time frame. RCAC staff were the only individuals with access to Karen's apartment.

Misappropriation of a Client's Property. Taking a resident's money without consent intentionally deprives the resident the use of these funds.

6.2.4

Injury of Unknown Source

An injury should be classified as an "injury of unknown source" when both of the following conditions are met:

- The source of the injury was not observed by any person **or** the source of the injury could not be explained by the resident; **and**
- The injury is suspicious because of the extent of the injury **or** the location of the injury (e.g., the injury is located in an area not generally vulnerable to trauma) **or** the number of injuries observed at one particular point in time **or** the incidence of injuries over time.

DQA publication
P-00976, *Misconduct
Definitions*

Example

Maude T., resident of an adult family home, appears agitated and complains of her arm hurting when trying to feed herself. Nurse aide, Jeff H., reports the information to the supervisor who checks Maude's arm thoroughly, but does not find any injury.

The next day, a large bruise appears on Maude's arm. X-rays confirm that the resident's arm has a fracture. Maude does not know how it happened and there is no documentation of any incidents involving Maude.

Injury of Unknown Source. At the time the injury is discovered, it is not known how the client hurt her arm. As the client has a fractured arm and it is not known how the fracture occurred, caregiver misconduct cannot be ruled out.

6.2.5

Incident

Caregiver misconduct and injuries of unknown source are considered "incidents".

6.3.0

INCIDENT REPORTING

Anyone who has information regarding an incident may report the incident to the entity. An entity can learn of an incident from:

- Verbal or written statement of a client
- Verbal or written statement by someone in a position to have knowledge of the incident through direct or indirect observation
- Discovering an incident after it occurred
- Hearing about an incident from others

s. 146.40(4r)

- Observing injuries (physical, emotional, or mental) to a client
- Observing misappropriation of a client's property
- Or otherwise becoming aware of an incident

6.3.1

Written Procedures

Entities are required to develop written procedures specifying:

- How and to whom staff are to report incidents
- How internal investigations will be completed
- How staff will be trained on the procedures related to allegations of caregiver misconduct
- How residents will be informed of those procedures

Every entity must ensure that its employees, contractors, volunteers, clients, and non-client residents are knowledgeable about the entity's misconduct reporting procedures and requirements. Staff must be trained to immediately report to the appropriate person all allegations of misconduct, including abuse or neglect of a client or misappropriation of a client's property.

Note: FDDs should refer to DQA Memo 04-002 regarding reporting allegations to the Administrator.

See the *Misconduct Reporting Requirements for Entities Regulated by the Division of Quality Assurance in Wisconsin's Caregiver Program* brochure (DQA publication P-63158).

Entities that fail to develop written procedures on misconduct reporting requirements can be subject to regulatory sanctions.

6.4.0

ENTITY INTERNAL INVESTIGATION RESPONSIBILITIES

DHS 13.05(3)

All entities regulated by DQA must conduct a thorough internal investigation and document the findings for **all** allegations or incidents at the entity. A thorough internal investigation may include:

- Collecting and preserving any physical and documentary evidence;
- Interviewing alleged victims and witnesses;
- Collecting other corroborating/disproving evidence;
- Involving other regulatory authorities who can assist (e.g., local law enforcement, elder abuse agency, Adult Protective Service agency, DQA, Board on Aging Ombudsmen, Client Right's Specialist, etc.); and
- Documenting each step taken during the internal investigation.

These steps should be taken as part of the entity's initial attempt to determine what, if anything, happened and to determine the complete factual circumstances surrounding the alleged incident.

An entity's internal investigation will assist in determining if an incident must be reported to DQA (see **6.5.0. – 6.6.0.**). If the incident is reported to DQA, the entity's internal investigation becomes part of the DQA caregiver misconduct investigation (see **6.7.0.**).

6.4.1 Protection of Clients

DHS 13.05(2)

Immediately upon learning of the incident, the entity must take necessary steps to protect clients from possible subsequent incidents of misconduct or injury.

6.4.2 Notifying Law Enforcement

In addition to DQA reporting requirements, entities are encouraged to notify local law enforcement authorities in any situation where there is a potential criminal offense.

6.4.3 Entity Internal Investigative Report

The entity must investigate any allegation or incident reported to them. A timely and thorough entity investigative report is critical to the possible substantiation of a finding of caregiver misconduct.

An internal investigative report provides:

- A record of the entity's internal investigator's activities and findings so that nothing is left to memory
- A permanent official record of the entity's internal investigator's actions, observations, and discoveries
- A basic reference of the case
- Information on what has been done concerning the case
- A basis for deciding further action
- A method to communicate the findings of the case
- Information that can be evaluated and analyzed to detect and identify patterns of conduct

Entity reports should be written whenever an incident of caregiver misconduct or an injury of unknown source is reported to an entity and each time a contact has been made as part of the internal investigation.

6.4.3.1 *Elements of the Entity Report*

Entity reports should contain the following basic elements:

1. **Individuals Involved** (*who*)

Include all persons who are connected in any way with the incident under investigation:

- Resident, client, or patient
- Complainant
- Suspect or accused person
- Witness
- Any others with first-hand knowledge

Identify each person separately in such a manner that he/she cannot be confused with any other individual, including:

- Legal name – first, middle, last
- Names used – nicknames
- Title, position, place of employment
- Gender, race

-
- Date of birth
 - Social security number
 - Full address
 - Telephone number
2. **Description** (*what*)
- Describe the incident in a precise and accurate manner.
- Document observable facts.
 - Photograph injuries, bruises, skin tears, etc.
 - Obtain statements of witnesses.
3. **Timeframe** (*when*)
- Attempt to establish the date and time of the incident.
4. **Location** (*where*)
- Include the specific location of all persons and things that are related to the offense or incident, including:
- Specific location of room, using room numbers, wings
 - Specific location of objects in the space
 - Noise
 - Location of furnishings
 - Type of furnishings
 - Clothing of victim
- Document physical findings using diagrams, sketches, and photographs, as appropriate.
5. **Effect on the Client or Client's Reaction**
6. **How the Incident Occurred**
-

6.5.0

ENTITY INTERNAL INVESTIGATION RESULTS

DHS 13.05(3)(a)

The entity must document the results of their internal investigation using the **Caregiver Misconduct Incident Report** (DQA form F-62447). The answers to questions asked during the entity's internal investigation are the foundation when determining whether or not to report an incident to DQA.

The following documents can assist an entity in determining if an incident must be reported to DQA:

- Caregiver Misconduct Reporting Requirements Worksheet (DQA form F-00161)
- Flowchart of Entity Investigation and Reporting Requirements (DQA form F-00161A)

6.5.1

Mandated Incident Reporting

s. 146.40(4r)(am)1
DHS 13.05(3)(a)

Incidents **must** be reported to DQA when:

- The entity has reasonable cause to believe it has sufficient evidence or another regulatory authority could obtain the evidence to show the alleged incident occurred **and**
- The entity has reasonable cause to believe the incident meets or could meet the definition of abuse, neglect, or misappropriation.

When an entity concludes that these conditions are true, the entity **must** report the incident to DQA on the Caregiver Misconduct Incident Report (DQA form F-62447).

Example

Mary G., nurse aide at a hospital, overhears Jack K., nurse aide, shout loudly to patient Ellie V., "Will you shut up? I am sick and tired of cleaning up your disgusting messes! You make me sick"! Ellie begins to cry and will not respond to anyone for the rest of the evening.

Mary reports the incident to her floor supervisor, Betty F. Mary was just outside the client's room when the incident occurred and could clearly hear and see the accused aide and made a credible statement to that effect.

After the incident, Betty immediately checks on the client, finds her crying, and documents her withdrawn and unresponsive state for the rest of the evening. Betty interviews the two nurse aides after the incident and Jack K. is evasive, changing his story several times, but admits that he was attempting to clean up Ellie after toileting her.

In this example:

1. The entity has reasonable cause to believe there is sufficient evidence to show that the incident occurred (as a credible witness overheard the incident).
2. The entity has reasonable cause to believe that the incident meets the definition of abuse of a client. [**Abuse:** *A course of conduct – when done with intent to harass, intimidate, humiliate, or threaten a client – causes, or could reasonably be expected to cause, mental or emotional damage as exhibited by anxiety, depression, withdrawal, fear of harm, etc.*]

When these conditions exist, entity **MUST** report the incident to DQA.

Example

On Monday morning, Nancy B., bookkeeper at a community-based residential facility, discovers that the lock box containing the resident's account money is missing from the file cabinet where it is stored. The file cabinet is located right outside of Nancy's office, within her vision. Nancy opens the file cabinet every morning, leaves it open during the day, and locks it in the evening.

Rita J., facility manager, conducts a thorough investigation. She interviews Nancy, who states that she last counted \$1,500 the previous Friday at 5:00 p.m. when she locked the file cabinet at the end of the day. Rita conducts interviews with all staff members. No staff member could provide any information on what might have happened to the money. Because Rita thinks that the police might be able to identify a suspect or prove

that a theft occurred, she calls the local police department to report the missing money.

In this example:

- The entity has reasonable cause to believe it or another regulatory authority could obtain sufficient evidence to show the incident occurred. (The entity believes the police may be able to obtain the evidence to indicate why the money is missing.)
- The entity has reasonable cause to believe the incident meets the definition of caregiver misconduct. (**Misappropriation:** *The intentional taking of a client's moveable property without the client's consent and with the intent to deprive the client of possession of the property.*)

When these conditions exist, the entity **MUST** report the incident to DQA.

If one of the following conditions exists, the entity must decide whether the incident must be reported (see 6.5.2.):

- The entity has less than reasonable cause to believe it has, or that any other regulatory authority could obtain, sufficient evidence to show the incident occurred.
- The entity has less than reasonable cause to believe that the incident meets one or more of the definitions of abuse, neglect, or misappropriation in DHS 13.

6.5.2

Optional Incident Reporting

The entity is **not** required to report an incident when:

- The entity does not believe that it has, or that another regulatory authority could get, sufficient evidence to show the incident actually occurred **or**
- The entity does not believe that the incident meets the definition of abuse, neglect, or misappropriation **and**
- The entity is reasonably certain that the incident does not meet the definition of caregiver misconduct or the definition of an injury of unknown source (e.g., the entity investigation includes documentation, nurse's notes, and/or witnesses to support that the incident is not caregiver misconduct or an injury of unknown source).

The entity must conduct an internal investigation and document the incident, but it is **not** necessary to report the incident to DQA.

Example

Corrine M., nurse aide, notices a large bruise on the arm of Paula L. Corrine reports the injury to her supervisor, Rachel W.

Rachel immediately begins an investigation and discovers documentation on the resident's care chart over the previous weekend noting that Paula bumped into a wall in the hallway. The nurse aide who observed the incident noticed the bruising on Paula's arm later that same day.

- The entity does not have reasonable cause to believe it or another regulatory authority could name the person they believe committed the incident.
- The entity determines that the incident does not meet the definition of caregiver misconduct (as there is credible documentation that the bruise was the result of everyday living).

The entity must conduct an internal investigation and document the incident, but it

is **not** mandatory to report the incident to DQA.

6.5.2.1

“Minor” Effect on the Client

A minor effect on the client is one that causes no apparent physical, emotional, or mental pain or suffering to a client. Examples include, but are not limited to:

- Taking a piece of a client’s candy
- Food missing from a client’s plate after the client has finished eating
- Mild profanities not directed at a client

The entity is **not** required to report an incident when:

- The entity does not believe that it has, or that another regulatory authority could get, sufficient evidence to show that the incident actually occurred **or**
- The entity does not believe the incident meets the definition of abuse, neglect, or misappropriation **and**
- The entity **cannot be reasonably certain that the incident is not misconduct, but the effect on the client is minor.**

Example

Georgia C., resident of a residential care apartment complex, reports to Joan P., personal attendant, that someone stole a small box of chocolate mints from her bedroom dresser. Georgia states that she received the box of candy from her granddaughter on her birthday the month before. Joan immediately reports the incident to her supervisor, Sally G.

Sally knows that the resident has several friends and family members that stop by weekly to visit. Sally asks the resident when she last saw the box of candy. Georgia states, “I can’t remember the last time I ate a piece of candy, but the box is missing now, so someone must have stolen it.”

In this example, the entity can’t be certain that caregiver misconduct did not occur, but the effect of the incident on the client was minor. (a small box of candy.) The entity must conduct an internal investigation and document the incident, but it is **not** mandatory to report it to DQA.

The following examples are **not** considered minor effects on the client:

- Discomfort occurring as a result of a skin tear due to rough handling
- Client cowering or crying due to verbal or physical threats
- The loss of a client’s spending money, even though the amount was small

6.6.0

ENTITY REPORTING REQUIREMENTS

Refer to the following documents to assist in determining if an allegation or incident must be reported to DQA:

- *Caregiver Misconduct Reporting Requirements Worksheet* (DQA form F-00161)
- *Flowchart of Entity Investigation and Reporting Requirements* (DQA form F-00161A)

6.6.1

Reported Incidents

Follow these steps to report an incident to DQA.

s. 146.40(4r)(am)1
DHS 13.05(3)(a)

1. Use the **Caregiver Misconduct Incident Report** (DQA form F-62447) and attach relevant internal investigation documents.
2. Ensure the completed incident report is submitted according to the appropriate timeframe.
 - Entities must submit reports of alleged caregiver misconduct to DQA within **seven calendar days** of the incident or the date the entity knew or should have known of the incident.
 - Nursing homes and Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICFs/IID) that are certified to receive Medicare and Medicaid funds must submit reports of alleged caregiver misconduct to DQA within **five working days** of the incident or the date the entity became aware of the incident.
3. For allegations involving all staff (non-credentialed and credentialed), submit the Caregiver Misconduct Incident Report to DQA at:

**Division of Quality Assurance
Office of Caregiver Quality
P.O. Box 2969
Madison, WI 53701-2969**

6.6.1.1

Credentialed Staff

In the past, entities were required to submit the report either to DQA or to the Department of Safety and Professional Services (DSPS). This process has been streamlined to eliminate reporting to two different agencies. All caregiver misconduct reports are submitted to DQA, who will forward reports involving credentialed staff (physicians, RNs, LPNs, social workers, etc.) to DSPS for review.

6.6.1.2

Continued Employment

Any employment action taken against the caregiver while a complaint is pending is an internal entity decision. An entity is not required to suspend or terminate a caregiver against whom an allegation has been made and reported. During this period, options available to the employer include, but are not limited to:

- Increased supervision
- Alternative work assignment
- Training
- Employment sanctions

Until final decision is made, it is up to the employer to choose appropriate interim options.

6.6.2

Unreported Incidents

Entities must maintain the results of the 30 most recent internal investigations that were not forwarded to DQA. Entities may still use the *Caregiver Misconduct Incident Report* (DQA form F-62447) to document the incident and the internal investigation results. Upon reviewing the results of unreported incidents, DQA survey staff may still refer the allegations to the Office of Caregiver Quality (OCQ) for further review and possible investigation.

Entities may be sanctioned for failing to meet caregiver misconduct reporting requirements if all of the following actions did not occur:

- The entity maintains written policies and procedures regarding caregiver misconduct, including internal reporting requirements.
- The entity trains all staff on those written policies and procedures.
- The entity immediately takes steps to protect the client(s).
- The entity begins an internal investigation immediately upon learning of an incident.
- The entity conducts a thorough internal investigation and documents the results.
- The entity makes good-faith decisions in determining whether or not to report an incident.

6.6.3

Reporting Requirement Penalties

s. 146.40(4r)(am)3
DHS 13.05(3)(e)

Entities that intentionally fail to follow the reporting requirement procedures for caregiver misconduct, including for contracted employees, may be subject to one or more of the following sanctions:

- Forfeiture of not more than \$1000;
- DQA approved or imposed corrective plan;
- DQA imposed regulatory limits;
- Suspension or revocation of license; or
- Notification of the act and any corresponding forfeiture in the local newspaper.

6.7.0

DQA CAREGIVER MISCONDUCT INVESTIGATION

s. 146.40(4r)(b)
DHS 13.05(6)

When DQA receives a complaint of caregiver misconduct from an entity or another source, the report is promptly screened by DQA's Office of Caregiver Quality (OCQ) to determine whether further investigation is warranted. Investigation screening decisions are made on a case-by-case basis. OCQ notifies the accused person, entity, staffing agency (if applicable), and complainant by letter whether an investigation will be conducted by OCQ.

Not all reported incidents are investigated by DQA. However, DQA does track and monitor all incident reports. When a pattern of reported incidents by a caregiver occurs, an investigation may be opened at a later date.

DQA may conduct a caregiver misconduct investigation by conducting on-site visits, in-person interviews, or telephone interviews. Both state investigators and contracted private investigators complete caregiver misconduct investigations. During DQA's investigation, the entity must continue to protect the client. Entities must cooperate with DQA in completing the caregiver misconduct investigation.

DQA investigators may request:

- Resident records to include medical records, care plan, nursing notes, statements from the resident, etc.
- Personnel records of the alleged caregiver to include employment application, orientation records, time sheets, assignment sheets, in-service records, background check information, etc.
- Personnel records of witnesses to include time sheets, assignment sheets, disciplinary records, etc.

- Entity internal investigation documents to include floor plans, photographs, diagrams, incident/accident reports, policy and procedures, etc.
- Incident/accident reports
- Other information or evidence, as needed

The entity's DQA regulatory programs (Bureau of Assisted Living, Bureau of Health Services, or Bureau of Nursing Home Resident Care) may also conduct a parallel investigation regarding the incident to determine if the entity's program requirements were met and if the entity bears culpability regarding the incident.

6.7.1 Release of Records

Entities are required under Chapters 50, 51, and 146, Wis. Stats., to release records to DQA investigators (both state investigators and contracted private investigators).

6.7.1.1 Health Care Records

s. 146.82(2)(a)5
DHS 34-134

Health care records include all records related to the health of a patient prepared by or under the supervision of a health care provider, but do not include those records relating to a patient's mental illness, developmental disabilities, alcoholism, or drug dependence. Per Section 146.82(2)(a)5, Wis. Stats., no release or informed consent is necessary to supply medical records of:

- An abused client or resident,
- A client or resident who is an eyewitness or otherwise involved in an incident of misconduct, or
- A caregiver or entity employee, if those medical records are contained in the entity's personnel files (a release or informed consent is needed for other health care records of a caregiver or entity employee).

6.7.1.2 Treatment Records

s. 51.30(4)(b)1 & 5
DHS 34-134

Treatment records, as defined in Section 51.30(1)(b), Wis. Stats., are registration and all other records concerning individuals who are receiving or who at any time have received services for mental illness, developmental disabilities, alcoholism, or drug dependence which are maintained by the department, by county departments under s. 51.42 or 51.437 and their staffs, and by treatment facilities. Per Section 51.30(4)(b)1 and 5, Wis. Stats., no release or informed consent is necessary to supply treatment records maintained by the entity at which the investigation is being conducted for:

- An abused client or resident,
- A client or resident who is an eyewitness or otherwise involved in an incident of misconduct, or
- A caregiver or employee.

For treatment records maintained by a provider or agency other than the entity at which the investigation is being conducted, a release or informed consent signed by the client, resident (or his/her agent), caregiver, or employee is necessary to obtain such records.

6.7.1.3 Personnel Records

DHS 34-134

No release or informed consent is necessary for personnel records of a caregiver or entity employee. The Department has the authority under several Wisconsin Administrative Code DHS sections to obtain any information from the entity that is necessary to document compliance with DHS rules and state statutes.

6.7.2 Confidentiality of Alleged Misconduct

While a caregiver misconduct investigation is pending, DQA maintains confidentiality regarding all information pertaining to the alleged incident.

DHS 13.05(8)

Once the caregiver misconduct investigation is complete, DQA issues a written decision regarding the investigation outcome. All information regarding alleged incidents that are not substantiated remains confidential. DQA investigations that result in substantiated findings become public record. A case summary of a person's substantiated finding of caregiver misconduct may be requested in writing.

6.7.3 DQA Caregiver Misconduct Investigation Outcome

DHS 13.05(6)(c)

In order for the Department to substantiate misconduct against a caregiver, the incident must meet the definition of caregiver abuse, neglect, or misappropriation. An incident may violate the work rules or procedures of a facility but at the same time not meet the definitions or the evidentiary standards of DHS 13. Therefore, it is possible that an employer may appropriately discipline or terminate a caregiver for a particular incident, but DQA may determine that it is unable to substantiate caregiver misconduct. After completing a caregiver misconduct investigation, DQA determines whether there is sufficient evidence to substantiate the complaint. DQA notifies the accused person, the entity, the complainant, and other appropriate agencies of the outcome of the investigation, i.e., whether or not the complaint was substantiated.

6.7.4 Substantiated Caregiver Misconduct

s. 146.40(4r)(b)
DHS 13(6)(c)2

Caregivers are provided written notice that DHS has determined that caregiver misconduct occurred and that the substantiated finding under their name will be entered on the Wisconsin Caregiver Misconduct Registry (see 6.8.0.). The reporting facility, the complainant, and other appropriate agencies also receive a copy of this written notice.

DHS 13.05(7)

Caregivers are allowed 30 days to appeal the Department's decision by submitting a written appeal to the Department of Administration, Division of Hearings, and Appeals. A fair hearing will be scheduled. While the fair hearing decision is pending, no information is entered on the Caregiver Misconduct Registry or given to the public. A person may continue to be employed pending the hearing decision (see 6.6.1.2.).

DHS 13.05(7)(c)

If the caregiver does not appeal or the hearing examiner upholds the Department's decision, the substantiated finding results in the person's name being entered on the Wisconsin Caregiver Misconduct Registry.

All caregivers who have a finding entered on the Wisconsin Caregiver Misconduct Registry may request a Rehabilitation Review with the Department (see Chapter 5). An approval through the Rehabilitation Review process allows a caregiver to work in a state-regulated facility.

Federal regulations require that nurse aides with a finding of caregiver misconduct be permanently barred from working in any capacity in federally regulated nursing homes and may be barred from working in Intermediate Care Facilities for Persons with Intellectual Disabilities (ICFs/IID). The Rehabilitation Review process cannot change this permanent bar.

6.8.0

WISCONSIN CAREGIVER MISCONDUCT REGISTRY

DHS 13.03(4) DHS
13.04(1)

The Wisconsin Caregiver Misconduct Registry is a record of the names of nurse aides and other non-credentialed caregivers with a substantiated finding of caregiver misconduct. Providers have an ongoing obligation to review on a monthly basis the caregivers whose names have been most recently added to the Misconduct Registry due to a substantiated finding. Some individuals, who upon hire did not have a finding, may receive one while employed and may not report that to the entity. Therefore, entities must check the updated Misconduct Registry each month. These monthly additions of caregivers with a finding of misconduct are posted by the 15th of the month and may be viewed at:

<http://dhs.wisconsin.gov/caregiver/misconduct.htm>

As Wisconsin law prohibits the publication of a person's Social Security Number, the Misconduct Registry identifies each caregiver by name, date of birth, and type of caregiver. More detailed information is available at Wisconsin's Internet-based Nurse Aide Registry at www.pearsonvue.com (Click on "Registry Services", then on "Wisconsin Nurse Aides" and "Search the Nurse Aide Registry").

- **Nurse Aide (NA).** Information will be provided regarding the aide's employment eligibility and whether a finding of misconduct has been placed under the aide's name.
- **Other Non-Credentialed Caregiver (CGE):** An individual (such as a personal care worker, maintenance worker, laundry aide, etc.) identified as a caregiver (CGE) with a finding may not be employed as a "caregiver" as that term is defined in s. 50.065 or 48.685, Wis. Stats., in any entity regulated by the Wisconsin DHS, unless approved through the Rehabilitation Review process.

OTHER RESOURCES

1. Caregiver Background Check Forms
<https://www.dhs.wisconsin.gov/caregiver/forms.htm>
2. DHS Forms Library
<https://www.dhs.wisconsin.gov/forms/index.htm>
3. Department of Justice State Repository Contact Information
<https://www.doj.state.wi.us/dles/cib/background-check-criminal-history-information>
4. Wisconsin Administrative Code, Chapter DHS 12, Caregiver Background Checks
https://docs.legis.wisconsin.gov/code/admin_code/dhs/001/12
5. Offenses Affecting Caregiver Eligibility for Chapter 50 Programs (DQA publication P-00274)
<https://www.dhs.wisconsin.gov/publications/p0/p00274.pdf>
6. Caregiver Program Rules and Regulations
<https://www.dhs.wisconsin.gov/caregiver/statutes.htm>
7. Other DHS Services
<http://dhs.wisconsin.gov/aboutdhs/index.htm>
8. DHS Acronym Glossary
<http://dhs.wisconsin.gov/data/glossary.asp>
9. Caregiver Misconduct Reporting Requirements Worksheet and Flowchart (DQA form F-00161)
<https://www.dhs.wisconsin.gov/forms/index.htm?search=00161&division=All=&=Apply>
10. Flowchart of Entity Investigation and Reporting Requirements for Caregiver Misconduct and Injuries (DQA form F-00161A)
<https://www.dhs.wisconsin.gov/forms/index.htm?search=00161&division=All=&=Apply>