Secretary Emilie Amundson on March 13, 2019.

Finding of Emergency

An emergency rule is necessary to fully implement federal regulations required for unding from the Child Care Development Fund by the deadline of September 30, 2019, and to clarify language where needed to ensure proper implementation and administration of the health and safety requirements.

Analysis Prepared by the Department of Children and Families

Statutory authority: Sections 48.651 (1d), 48.685 (9), 48.686 (9), 48.67 (intro.), and 127.11 (2) (4a). Stats.

Statutory authority: Sections 46.001 (10), 10.000 (2), 7.11 (2) (a), Stats.

Statutes interpreted: Sections 48.65 to 48.74, Stats.; s. 48.78, Stats.; s. 49.155,

Related statutes and rules: Sections 49.137 (4m), and 120.13 (14), Stats.; ch. DCF

Related statutes and rules: Sections 49.137 (4m), and 120.13 (14), Stats.; ch. DCF 201

Explanation of Agency Authority

Section 48.651 (1d), Stats., as affected by 2017 Wisconsin Act 59, provides that the department shall promulgate rules establishing standards for the certification of child care providers. The rules shall include a requirement that a Level I certified child care provider successfully complete department—approved preservice health and safety training by no later than the date of certification. A Level II certified child care provider shall successfully complete the required training by no later than the end of the orientation period available under 42 USC 9858c (c) (2) (1) (i) (XI).

Employees and volunteers of a Level I or Level II certified child care provider must also complete the required training by the end of the orientation period. Section 48.651 (1d) (b) 1. a. to j. Stats., specifies topics that must be included in the required preservice or orientation training. Subdivision 2. provides that a child care provider or employee or volunteer of a child care provider shall also complete ongoing in-service training on an annual basis, including training on the topics listed in subd. 1. a. to j. Section 48.685 (9), Stats., provides that the department may promulgate any rules necessary for the administration of the section.

Section 48.687 (intro.), Stats., provides that the department shall promulgate rules establishing minimum requirements for the issuance of licenses to, and establishing standards for the operation of, child welfare agencies, child care centers, foster homes, group homes, shelter care facilities, and county departments. Those rules shall be designed to protect and promote the health, safety, and welfare of the children in the care of all licensees.

Section 227.11 (2) (a) (intro.), Stats., expressly confers rule-making authority on each

Section 227.11 (2) (a) (intro.), Stats., expressly confers rule-making authority on each ency to promulgate rules interpreting the provisions of any statute enforced or administrated by the agency.

y the agency. Yof the Emergency Rule.

Timary purpose of the emergency rule is to ensure that the department's rules child care certification and licensing comply with the health and safety rents in federal regulations based on the Child Care Development Block Grant:

Act of 2014. The emergency rule also regroups the department's child care ion and licensing rules that address the same topics in different places, elimibilicative provisions, correct errors, and clarify language where needed to ensure nplementation and administration of the health and safety requirements.

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Chapters DCF 12, 13, and 40, Background Checks

The CCDBG creates a new federal background check affecting child care programs.

For child care programs in Wisconsin, the most significant change is the requirement that the state agency conduct the background checks. Before this change, child care and child welfare licensees conducted the background checks of prospective and existing employees and contractors under s. 48,685, Stats. To comply with federal requirements, a new state background check statute for child care programs was created at s. 48,686, Stats., and s. 48,685, Stats., continues to apply to child welfare providers. Section 48,686, Stats., also creates a new appeal process for persons subject to the background check in child care programs.

The department's current rule on caregiver background checks under s. 48,685, Stats., is not. DCF 12. The emergency rule creates ch. DCF 13 based on the requirements under s. 48,686, Stats. and amends ch. DCF 12 based on the requirements under s. 48,686, Stats. and amends ch. DCF 12 based on the requirements under s. 48,686, Stats. The new ch. DCF 13 includes provisions on submitting a background check request to the department and the required appeal process. Under the new appeal process, a person who is determined ineligible may file an appeal with the department's Child Care Background Unit. If denied, the person may request a department's Child Care Background Unit. If denied, the person may request a contested case hearing before the Division of Hearings and Appeals under ch. 227, Stats.

Chapter DCF 13 also includes provisions similar to ch. DCF 12 on determining whether an offense is substantially related to the care of a child or the activities of a child care program and the process for determining whether a person has abused or neglected a child is a bar to eligibility under both ss. 48,685 and 48,686, Stats.

Chapter DCF 102, Child Care Certification.

The emergency rule

 autrements in 45 CFR 98.44 and s. 48.651 (1d), Stats., as affected by 2017 Wisconsin Act 59.
 By 3 months after certification or beginning to work with children in care, the following new preservice or orientation training is required:

 At least 2 credits in early childhood education or a department-approved noncredit course in caring for child.
 A department-approved noncredit course in operating a child care business or an equivalent.
 Training in child abuse and neglect laws and identifying, documenting, and reporting child abuse and neglect.
 Certification in infant and child cardiopulmonary resuscitation (CPR).

 Each year 5 hours of continuing education is required in topics specified in s. 48.651 (1d), Stats., and 45 CFR 98.41 (a) (1). Previously, each certification agency had discretion to impose an annual continuing education requirement of up to 5 hours.
 Incorporate the requirements in 45 CFR 98.41 on emergency preparedness and response planning for an emergency resulting from a natural disaster or a human-caused event, such as violence in the child care home. A certified operator is required to have a written plan that includes procedures for evacuation, relocation, shelter-in-place, and lock down; communication and reunification with families; continuity of operations; and accommodation of infants and toddlers, children with disabilities, and children with chronic medical conditions.
 Ensure appropriate precautions when transporting children chronic medical conditions.
Ensure appropriate precautions when transporting children by clarifying the current transportation rules and creating the following provisions:

A driver transporting children in care may not use a cell phone and other wireless device, unless the vehicle is out of traffic, not in operation, and the phone or device is used to communicate regarding an emergency.
Prior to the day a driver first transports children in care, the operator shall submit to the certification agency a copy of the driving record for the driver and obtain approval of the driver from the certification agency.
Prior to a driver transporting children in care for the first time, the certified child care operator shall review various safety-related requirements with the driver.
A driver shall be at least 18 years of age and have at least one year of experi-

driver.

A driver shall be at least 18 years of age and have at least one year of experience as a licensed driver.

A child's emergency contact information shall be carried in the vehicle when the child is being transported.

Smoking is prohibited in a child care vehicle while children are being transported.

A child's emergency contact information shall be carried in the vehicle when the child is being transported.
Smoking is prohibited in a child care vehicle while children are being transported.
The vehicle shall be clean, uncluttered, and enclosed. No children may be transported in a truck, except in the cab.
Reorganize and clarify rules regarding the process for certification agencies administering certification, including sections related to applications, background checks, monitoring, enforcements, and complaints. Background check provisions are updated to include the CCDBG requirements.
Incorporate the federal requirement that agencies conduct annual unannounced monitoring visits of certified family child care operators during hours of operation. Monitoring visits of operators that are providing care in the child's home may be planned in advance and are not required to be during hours of operation.
Require that a certified child care operator be an individual and not a corporation, partnership, limited liability company, non-incorporated association, or cooperative that is a certified child care operator will be allowed to apply for recertification.
An individual may apply or reapply for certification.
An individual may apply or reapply for certification.
This requirement prevents an ineligible person from setting up a "strawman" or "shell corporation" and fraudulently obtaining certification.
This provision does not affect an operator's ability to incorporate or otherwise form a business entity for other legal or tax reasons.
Repeal a certification agency's discretion to limit certification to operators that have a high school diploma or GED.
Repeal school-age certification under s. DCF 202.09. There are currently 4 school-age certified programs in the state, and only 3 of the programs are active. An operator of an existing school-age program may apply for licensure to continue eligibility for child c

48.686, Stats.

Amend the existing emergency preparedness and response planning rule to comply with 45 CFR 98.41 and require that a licensee's written emergency plan includes procedures for evacuation, relocation, shelter-in-place, and lock down; communication and reunification with families; continuity of operations; and accommodation of infants and toddlers, children with disabilities, and children with chronic medical conditions.

Ensure appropriate precautions when transporting children by clarifying the current transportation rules and creating the following provisions:

A driver transporting children in care may not use a cell phone and other wireless device, unless the vehicle is out of traffic, not in operation, and the phone or device is used to communicate regarding an emergency.

Before a driver transports children in care for the first time, the licensee shall review various safety-related requirements with the driver.

Consolidate all rules on supervision of children and staff-to-child ratios and maximum group size into none section. No change is made to the current staff-to-child ratios or maximum group size requirements.

Eliminate duplicative provisions and consolidate rules on the following topics:

Personal hygiene requirements, especially handwashing.

Medical logs books.

DCF 250. Licensing Rules for Family Child Care Centers.

Medical logs books.
 DCF 250. Licensing Rules for Family Child Care Centers
 The emergency rule revises ch. DCF 250, Family Child Care Centers, to do the fol-

- Eleminate duplicative provisions and consolidate rules on the following topics:
- Personal hygiene requirements, especially handwashing.

- Medical logs books.

- Medical logs books.

- The emergency rule revises ch. DCF 250, Family Child Care Centers, to do the following the existing preservice or orientation training and continuing education requirements to comply with 45 CFR 88.44 as follows:

- Whithin 3 months after obtaining a license or beginning to work with children in care, providers must obtain certification in infant and child cardiopulmonary resuscitation (CPR). CPR certification is currently required within 6 months after licensure or beginning work.

- Add continuing education topics to correspond to the list of health and safety standards that providers are required to maintain and update under 45 CFR 98.44 (b) (12) (i) and 45 CFR 98.44 (b) (17).

- Consolidate all requirements for staff into one section, including staff files, qualifications, and professional development requirements, and create alternative ways to meet the qualifications with the Wiscosnin Family Child Care.

- Require that a family child care licensee be an individual and not a corporation, partnership, intelled liability company, non-incorporated association, or cooperative with at a family child care licensee be an individual and not a corporation, partnership, intelled liability company, non-incorporated association, or cooperative with the side of the corporation, partnership, limited liability company, non-incorporated association, or cooperative with sia licensee, an individual may apply for licensure.

- This provision is needed because individuals who were ineligible for licensure due to fraud in the child care subsidy program or convictions for other barred crimes have set up 'strawmen' or 'shell corporations' in the name of a friend or relative and fraudulently obtained a license, operated a child care center, and received child care subsidy pyrogram or convictions for other barred crimes have set up 'strawmen' o

needs.

\*\*Consolidate all requirements for staff into one section, including staff files, qualifications, and professional development and do the following:

\*\*Add alternative ways to meet the qualifications without creating additional minimum qualifications for a center administrator, director, teacher, or assistant teacher.

Sistaint leacher.
Repeal the requirement that a center director work a specified number of hours per week exclusively carrying out director duties.
Expand the ways that staff may qualify for work exclusively with school-age children, including the Wisconsin Afterschool and Youth Development Credential. exceptions for centers serving only school-age children to the following:

• The requirement regarding screens on doors and windows used for ventila-

The requirement for an energy absorbing surface at least 9 inches deep on playgrounds.

Move provisions related to *child care programs established or contracted for by school boards* from ch. DCF 252, Subchapter II, to *ch. DCF 251*. These programs are required to comply with the group child care center licensing rules. The department will conduct an annual inspection of the programs to monitor compliance with the rules. DCF 252, Licensing Rules for Day Camps.

The emergency rule revises ch. DCF 252, Day Camps, to do the following:

Consolidate requirements on *staff records and qualifications* into one section and allow the Wisconsin Afterschool and Youth Development Credential as an educational qualification for camp directors.

Consolidate rules on the *condition of the premises*, including buildings and other spaces used by children.

spaces used by children.

Summary of Data and Analytical Methodologies

The primary purpose of the emergency rule is to ensure that the department's rules affecting child care certification and licensing comply with the health and safety requirements in federal regulations based on the Child Care Development Block Grant (CCDBG) Act of 2014. The emergency rule also regroups the department's child care certification and licensing rules that address the same topics in different places, eliminate duplicative provisions, correct errors, and clarify language where needed to ensure proper implementation and administration of the health and safety requirements.

proper implementation and administration of the health and safety requirements. 

Summary of Related Federal Law 
45 CFR 98.41 Health and safety requirements 
Each state shall have statutes or rules applicable to child care providers that include requirements designed to protect the health and safety of children on, at a minimum, all of the following topics:

The prevention and control of infectious diseases, including immunizations.

The prevention of sudden infant death syndrome and the use of safe sleeping practices.

tices

Administration of medication, consistent with standards for parental consent.

Prevention and response to emergencies due to food and allergic reactions.

Building and physical premises safety, including the identification of and protection from hazards, bodies of waters, and vehicular traffic.

Prevention of shaken baby syndrome, abusive head trauma, and child maltreatment.

Emergency preparedness and response planning for emergencies resulting from a natural disaster or a human-caused event within the meaning of those terms under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. The following topics shall be included:

shall be included:

• Procedures for evacuation, relocation, shelter-in-place, and lock down.

• Staff and volunteer emergency preparedness training and practice drills.

• Communication and reunification with families.

• Continuity of operations.

• Accommodation of infants and toddlers, children with disabilities, and children with chronic medical conditions.

Handling and storage of hazardous materials and the appropriate disposal of bioconaminants.

Handling and storage or nazardous materials and the appropriate disposal of blocontaminants.
 Appropriate precautions in transporting children, if applicable.
 Pediatric first aid and cardiopulmonary resuscitation.
 Recognition and reporting of child abuse and neglect.
 45 CFR 98.42 Enforcement of licensing and health and safety requirements
 Each state shall have monitoring policies and practices to ensure that child care providers comply with applicable health and safety requirements. Compliance monitoring for licensed child care must include at least one inspection before a license is issued and an unannounced inspection at least annually. Compliance monitoring for license-exempt child care must include an annual inspection.

 45 CFR 98.43 Criminal background checks
 Each state is required to have in effect requirements, policies, and procedures to require and conduct criminal background checks for employees of child care facilities including prospective staff members and any individual residing in a family child care program who is age 18 and above.

 45 CFR 98.44 Training and professional development Framework.

48 CFR 98.44 Iraning and professional development.

Framework

Each state must establish a framework for training, professional development, and postsecondary education for child care providers, teachers, and directors that is developed in consultation with the state advisory council and addresses professional standards and competencies, career pathways, and workforce information and financing. A state's framework for training, professional development, and postsecondary education for child care providers, teachers, and directors shall also do all of the following:

• Establish qualifications for providers in different child care settings.

• Reflect current research and best practices, including culturally and linguistically appropriate practices.

• Improve the quality, diversity, stability, and retention of providers, teachers, and directors.

Preservice or Orientation Training

Improve the quainty, uiversity, stability, and tister and directors.

Preservice or Orientation Training.

Each state shall require child care providers, teachers, and directors to complete a preservice or orientation training within their first 3 months in the position. The training shall include all of the following topics:

The health and safety topics in 45 CFR 98.41.

Child development, including the major domains (cognitive, social, emotional, and physical and approaches to learning).

Ongoing professional development

Each state shall establish the number of hours of ongoing professional development that child care providers, teachers, and directors must complete annually. The required training shall be aligned to a progression of professional development and shall update health and safety standards, incorporate knowledge and application of the state's early learning and developmental guidelines for children from birth to kindergarten, and incorporate social-emotional behavior intervention models.

Comparison to Adiacent States

Comparison to Adjacent States

All states have been amending statutes and rules to comply with CCDBG require-

ments.

Minnesota —New requirements will be effective 9/30/19, including additional staff or entation health and safety training, handling and disposal of bodily fluids, emergency preparedness and response training, and unannounced annual inspections.

Michigan —Michigan now requires that child care homes be licensed instead of registered. Annual licensing visits will be made to all child care sites. Emergency plans for centers will include a plan for what to do if there is violence at the center. Training requirements have broadened, including the requirement that all staff must have a current CPR/First Aid card. Temporary operation of a child care center at a different location in case of a disaster will now be allowed under certain circumstances.

Illinois —Illinois rules have been amended to incorporate additional training requirements for licensees and assistants and additional documentation for emergency preparedness plans. Changes to the background check process are pending.

Lowa — Changes include preservice/orientation for child care providers and CPR and professional development and a new background check process.

Effect on Small Businesses

lowa – Changes include preservice/orientation for child care providers and or is and professional development and a new background check process.

Effect on Small Businesses

The emergency rules will affect small businesses that are child care operators or licensees. The rules will have minimal or no economic impact on these small businesses.

Analysis Used to Determine Effect on Small Businesses

Most of the substantive changes in the rule are required by federal law. Several other changes are less restrictive than the current rule.

Agency Contacts

Licensed child care: Tina Feaster, (608) 422-6027, jolene.belling@wisconsin.gov.

Certified child care: Jolene Ibeling, (608) 422-6027, jolene.belling@wisconsin.gov.

SECTION 1. Chapter DCF 12 (title) is amended to read:

Chapter DCF 12

CAREGIVER BACKGROUND CHECKS FOR CHILD WELFARE PROGRAMS

SECTION 2. DCF 12.01 (1) is amended to read:

DCF 12.01 Purpose and scope. (1) This chapter is promulgated under the authority of ss. 48.67 (intro.), 48.685, 49.155 (1d), and 227.11 (2) (a), Stats., to specify procedures necessary to implement background checks required under s. 48.685, Stats., for caregivers and nonclient residents at an entity or with a caregiver specified in s. DCF 12.02 (4) (c).

Care givers a in orinciterin residents at a entity of with a caregiver specified in S. DCF 12.02 (4) (c).

SECTION 3. DCF 12.02 (1) "Agency" means the department, a county department, a certification agency, or a child-placing agency, or a school board that establishes or contracts for a child care program under s. 120.13 (14), Stats.

SECTION 4. DCF 12.02 (6) is repealed.

SECTION 5. DCF 12.02 (8) (intro.) "Client" means a person who receives direct care or treatment services from an entity or, a caregiver specified in s. DCF 12.02 (4) (c), or from a child care program under s. 48.686 (1) (aj). "Client" includes all of the following:

SECTION 6. DCF 12.02 (14) (h) to (j) are repealed.

SECTION 7. DCF 12.02 (18) (a) is amended to read:

DCF 12.02 (18) (a) The person is 12 10 years of age or over.

SECTION 8. DCF 12.02 (18) (Note) is repealed and recreated to read:

DCF 12.02 (18) (Note) is repealed and recreated to read:

DCF 12.02 (18) (Note) or example, household members in foster homes are "nonclient residents."

ent residents."

SECTION 9. DCF 12.02 (21) (c) and (d) and (23) are repealed.

SECTION 10. DCF 12.02 (24) and (Note) are repealed and recreated to read:

DCF 12.02 (24) "Serious crime" means the offenses specified in s. 48.685 (1) (c),

Stats. "Serious crime" includes the offenses specified in s. 48.685 (5) (bm) 4., Stats., after the waiting period for eligibility to demonstrate rehabilitation, unless the person has demonstrated rehabilitation unders. DCF 12.13 or 12.14.

Note: Tables that list serious crimes applicable to each program are available in the program regulatory sections of the department website at http://dcf.wisconsin.gov.

For group homes, residential care centers, child-placing agencies, and shelter facilities, see the child welfare licensing/background checks section of the department website.

For foster homes, adoption home studies, adoption assistance, and subsidized uardianship, see the foster care/related statutes and administrative rules section of the epartment website.

department website.

SECTION 11. DCF 12.03 (2) (title) is repealed and recreated to read:
DCF 12.03 (2) TIMELY BID.

SECTION 12. DCF 12.07 (title) is amended to read:
DCF 12.07 Child welfare denial Denial and revocation information.

SECTION 13. DCF 12.08 (1) (a) and (b) and (2) (a) 1. and 2. are amended to read:
DCF 12.08 (1) (a) The person is the subject of a delinquency petition alleging that the person committed a serious crime on or after his or her 12th 10th birthday.

(b) The person has been adjudicated delinquent on or after his or her 12th 10th birthday for committing any crime.

(2) (a) 1. A person who is age 12 10 or over and is not a client begins residing at, or is expected to reside at, an entity.

2. A person who is residing at the entity and is not a client turns 12 10 years of age. SECTION 14. DCF 12.08 (2) (b) 1. Is renumbered DCF 12.08 (2) (b). SECTION 15. DCF 12.08 (2) (b) 1. Is renumbered DCF 12.08 (2) (b). SECTION 15. DCF 12.08 (3) (a) and (b) are amended to read:

DCF 12.08 (3) (a) The person is the subject of a delinquency petition alleging that the person committed a serious crime on or after his or her 12th 10th birthday. (b) The person has been adjudicated delinquent on or after his or her 12th 10th birthday for committing any crime.

SECTION 17. DCF 12.09 (1) (a) and (2) (intro.) are amended to read:

DCF 12.09 (1) (a) An entity that commits does any of the following acts may be subject to one or more of the sanctions specified in par. (b):

(2) (intro.) An applicant for regulatory approval who does any of the following may be subject to denial of an application for regulatory approval:

SECTION 18. DCF 12.11 (1) is renumbered DCF 12.11 (intro.) DCF 12.11 (1) (a) to (c) are renumbered DCF 12.11 (1) a) and, as affected by this section, DCF 12.11 (1) and (2) are amended to read:

(2) The person is not permitted to demonstrate rehabilitation for the applicable of ferse under s. 48 685 (5) (birm) -réf-b). Stats

(2) The person is not permitted to demonstrate rehabilitation for the application for section and the section of the person requesting the formal properties of the person requesting the formal properties of the person requesting the formal properties of the person requesting the repulse of a rehabilitation review products a good cause explanation.

(3) (a) The Aperson requesting the for whom a rehabilitation approval to the request for a rehabilitation review shall be denied, unless the person requesting the request to the department of Children and

on which a person completes required information for purposes of the child care background check.

Note: DCF-F-5296-E, Background Check Request Form, is available electronically through the Child Care Provider Portal and on the department's website at https://dcf.wisconsin.gov/forms.

(3) "Bar" means any of the following:

(a) A barrier to a person's eligibility for regulatory approval, employment, or contract as a caregiver.

(b) A barrier to a person's nonclient residency at a child care program.

(4) "Caregiver" means any of the following:

(a) A person who is an employee or independent contractor of a child care program or has unsupervised access to clients of a child care program or has unsupervised access to clients of a child care program, including student teachers, household members age 10 and older, and volunteers counted for the purpose of meeting the required staff-to-child ratios.

(c) A person who has, or is seeking, a license, certification, or contract to operate a child care program.

(5) "Certification agency" means the department in a county having a population of 750,000 or more or a county department, person, or tribe that has a contract with the department to certify child care providers under s. 48.656 (2), Stats, in a particular county or tribal area.

tribal area.

(6) "Child care background check" means the requirements in s. 48.686, Stats., and s chapter.

(7) "Child care program" means any of the following:

(a) A child care center that is licensed under s. 48.65 Stats.

(b) A child care provider that is certified under s. 48.651, Stats.

(c) A child care program established or contracted for under s. 120.13 (14), Stats.

(d) A temporary employment agency that provides caregivers to another child care param.

program.

(8) "Client" means a person who receives direct care from a child care program, an entity, as defined in s. DCF 12.02 (14), or from a caregiver specified in s. 48.685 (1) (ag) 1. am., Stats., including all of the following:

(a) An adopted child for whom adoption assistance payments are being made under s. 48.975, Stats.

child for whom subsidized guardianship payments are being made under s. 48.È23. Stats.

(c) A person who is 18 to 21 years old, is receiving independent living services under 42 USC 677 (a) from an agency, is no longer placed in out-of-home care, and is residing in the foster home in which he or she was previously placed.

(9) "Contractor" means, with respect to a child care program, a person who provides services to the child care program under an express or implied contract or subcontract, or that person's agent.

(10) "County department" means a county department of social services established under s. 46.22, Stats., or a county department of human services established under s. 46.23. Stats.

(21) "Department" means the department of children and families.
 (12) "Direct contact" means face-to-face physical proximity to a client that affords the portunity to commit abuse or neglect of a client or to misappropriate the property of a

client.

(13) "Division of hearings and appeals" means the division of hearings and appeals within the department of administration.

(14) "Final substantiated finding" means all of the following:

(a) A final determination made after January 1, 2015, that a person has abused or neglected a child under s. 48.981 (3) (c) 5m., Stats., and s. DCF 40.04 if the final determination has not been reversed or modified on appeal.

(b) A determination made before January 1, 2015, that a person has abused or neglected a child under s. 48.981 (3) (c) 4., 2011 Stats., if the determination has not been reversed or modified on appeal.

Note: The date in a statutory citation means that was the last edition of the statutes in which that provision appears.

(15) "Nonclient resident" means a person who is age 10 or older, who resides, or is expected to reside, at a child care program or caregiver.

(16) "Regulatory approval" means any of the following:

(a) Issuance, continuation, or renewal of a license by the department under s. 48.66. Stats.

(b) Issuance or renewal of certification by a certification agency under s. 48.651, Stats.

(c) Approval of the person subject to the child care background check for a child care program to be established or contracted for by a school board under s. 120.13 (14), Stats.

Stats. (17) "Rehabilitation review" means an agency process in s. 48.686 (5), Stats., under which an eligible person who has a bar may seek approval for any of the following:

(a) Regulatory approval.

(b) Employment or contract with a child care program to be a caregiver.

(c) Residency at a child care program.

(d) "Reside" means to be present at a child care program for more than an aggregate of 14 calendar days within a 90-day period. "Reside" does not include incidental presence that does not afford unrestricted access to the premises or to children in care.

(19) "Role" means a person's job as a caregiver or a person's status as a nonclient resident at a child care program.

(20) "School board" means the board that has the powers specified in s. 120.13, Stats., for the schools of a school district.

(21) "Serious crime" has the meaning given in s. 48.686 (1) (c), Stats.

Note: A table that lists the child care serious crimes is available at https://dcf.wisconsin.gov/files/publications/pdf/5206.pdf.

(22) "Tribe" means a federally-recognized American Indian tribe or band in Wisconsin.

. (23) "Volunteer" means a person who is not compensated, but agrees to give time, h or without reimbursement for expenses, to transport or to work with children program.

with or without reimbursement for expenses, to transport or to work with children in a child care program.

DCF 13.03 Background check request. (1) REQUIRED FORMS AND FEES. A background check request shall include a completed background check request form, armed forces records under s. DCF 13.04, release forms, child care background check fees, and any additional information that the department determines is necessary to obtain the records required under s. 48.686 (2) (am), Stats.

(2) FINGERPRINT SEARCHES. (a) Prior to working as a caregiver or residing in a child care program, the subject of the background check shall submit fingerprints in a manner directed by the department.

(b) Every 5 years or as otherwise requested by the department, caregivers and non-client residents shall resubmit fingerprints in a manner directed by the department and the information specified under sub. (1).

Note: DCF-F-5296-E, Background Check Request Form, is available electronically through the Child Care Provider Portal and on the department's website at https://dcf. wisconsin.gov/forms.

wisconsingov/forms.

DCF 13.04 Obtaining armed forces information. (1) If a person who is the subject of a background check served in a branch of the U.S. armed forces within the previous 3 years, including any reserve component, the department shall make every reasonable effort to obtain the discharge status of that person, either from the discharge papers issued to the person or from the armed forces branch in which the person served. The department shall document the efforts made to obtain the discharge status of the person.

department shall occument the eirors made to obtain the discharge status of the person.

(2) If the discharge status of the person described in sub. (1) is other than honorable, the department shall make every reasonable effort to obtain information on the nature and circumstances of the discharge.

Note: The information from the armed forces may include military court findings or information relevant to making a background check determination.

DCF 13.05 Determining whether other offenses are substantially related. (1) CAREGIVERS AND NONCLIENT RESIDENTS. To determine whether a caregiver or nonclient resident's conviction or delinquency adjudication for an offense that is not a serious crime is substantially related to the care of a child or the activities of a child care program, the department shall consider all of the following:

(a) In relation to the person's role at the child care program, all of the following:

1. The nature and scope of the person's contact with clients.

2. The scope of the discretionary authority and independent judgment the person has to make decisions or take actions that affect the care of clients.

3. The opportunity the role at the child care program presents for committing similar crimes.

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 4. The extent to which acceptable performance of the role at the child care program puires the trust and confidence of clients and the parents or guardians of clients.
 5. The amount and type of supervision received.
 (b) In relation to the criminal conviction or delinquency adjudication, all of the follow-

ing:

1. Whether intent is an element of the crime.

2. Whether the elements or circumstances of the crime are related to the person's role at the child care program.

3. Any pattern of criminal convictions or delinquency adjudications.

4. The extent to which the crime relates to clients or other vulnerable persons.

5. Whether the crime involves violence or a threat of harm.

6. Whether the crime is of a sexual nature.

(c) In relation to the person, all of the following:

1. The number and type of crimes for which the person has been convicted or adjudicated delinquent.

2. The length of time between the conviction or delinquency adjudication and the decision affecting regulatory approval, employment, contract, or nonclient residency.

3. The person's participation in or completion of pertinent programs of a rehabilitative nature.

decision affecting regulatory approval, employment, contract, or nonclient residency.

3. The person's participation in or completion of pertinent programs of a rehabilitative nature.

4. The person's probation, extended supervision, or parole status.

5. If the person is a caregiver, the person's ability to perform or to continue to perform the role consistent with the safe and efficient operation of the program and the confidence of clients and the parents or guardians of clients.

7. The age of the person on the date the crime was committed.

(2) DOCUMENTATION. The department shall document how it reached the determination under sub. (1) that the criminal conviction or delinquency adjudication of a caregiver or nonclient resident is or is not substantially related to the care of a child or the activities of the child care program.

DCF 13.06 Background check eligibility. (1) PRELIMINARY ELIGIBILITY. (a) The department shall issue a preliminary eligibility determination that indicates whether a person is barred from employment as a caregiver or nonclient residency at the child care program based on any serious crimes reported on the federal bureau of investigation and Wisconsin department of justice fingerprint results.

(b) A child care program that receives a department determination that a person is rereliminarily eligible may employ, contract with, or allow the person to reside at the child care program pending the department's final eligibility determination under sub. (3).

(2) SUPERVISION OF PERSONS WITH PRELIMINARY ELICIBILITY. (a) Persons who begin work or residency with preliminary eligibility under sub. (1) shall be supervised at all times children are present. The supervision shall include periodic and direct observation of the person.

(b) A person who has received a final determination of eligibility under sub. (1).

(3) FINAL ELICIBILITY. (a) After receiving all of the records required under s. 48.686 (2) (am), Stats., the department shall provide a final written report to the child care progra