

Statement of Scope

Department of Children and Families

Rule Number: DCF 12, 13, 39, 40, 50, 52, 55, 56, 58, and 59

Relating to: Technical corrections and minor updates to child welfare rules

Rule Type: Permanent

This statement of scope was approved by the governor on August 20, 2021.

1. Finding/nature of emergency (for emergency rules only)

NA

2. Detailed description of the objective of the proposed rule

The proposed rules will make minor substantive changes, statutory updates, and technical corrections to the department's child welfare rules, including the following:

DCF 58, Kinship Care and Long-Term Kinship Care

DCF 58 provides that a relative caregiver of a child is eligible for long-term kinship care only if the relative caregiver is the child's guardian under s. 48.977, Stats. The proposed rule will extend eligibility for long-term kinship care to a relative caregiver who is the guardian of a child under a tribal court order issued by a tribal court located in Wisconsin pursuant to a tribal law that is substantially similar to s. 48.977, Stats.

Section 48.57 (3n) (am) 1., Stats., limited eligibility for long-term kinship care to a relative caregiver who was appointed the child's guardian under s. 48.977, Stats., until the cross-reference to s. 48.977, Stats., was removed in 2009 Wisconsin Act 71.

The proposed rules may also add similar language to other provisions in DCF 58.

DCF 39, Relinquishing Custody of a Newborn Child

DCF 39 includes a definition of "hospital staff member" that specifies various types of hospital staff members including "a hospital social worker, as described in s. DHS 124.25." The proposed rules will replace this provision with "a hospital social worker, case worker, or social work assistant" or similar language.

DCF 12, Background Checks for Child Welfare Programs

The proposed rules will update DCF 12 to conform with changes to s. 48.685, Stats., as affected by 2019 Wisconsin Act 9, that require agencies and entities to conduct a background check on any individual working in a residential care center for children and youth, group home, or shelter care facility. Prior to Act 9, an employee or contractor was subject to the background check requirements only if the employee or contractor met the definition of caregiver in s. 48.685 (1) (ag), Stats. The federal Family First Prevention Services Act of 2018 requires a background check for all workers in congregate care facilities, including residential care centers for children and youth, group homes, and shelter care facilities.

DCF 55, Subsidized Guardianship, and DCF 56, Foster Home Care for Children

The proposed rules will update DCF 55 and 56 to reflect changes to background checks required under s. 48.685, Stats., as affected by 2017 Wisconsin Act 59, including the following:

- An agency or entity is required to obtain criminal history information from another state or conduct an FBI fingerprint-based criminal history search of a person who is the subject of the background check if the person has not been a resident of this state at any time within a specified number of years prior to the search. 2017 Wisconsin Act 59 extended this time period from 3 years to 5 years preceding the search.
- Prior to 2017 Wisconsin Act 59, s. 48.685 (4m), Stats., provided that, unless a person has demonstrated that the person has been rehabilitated, the person is barred from licensure, employment or contract, or nonclient residency if the person has been convicted of a serious crime specified in s. 48.685 (1) (c), Stats. 2017 Wisconsin Act 59 amended s. 48.685 (4m), Stats., to add the following reasons a person may be barred:
 - The person is the subject of a pending criminal charge alleging that the person committed a serious crime specified in s. 48.685 (1) (c), Stats.,
 - The person has been adjudicated delinquent for committing a serious crime specified in s. 48.685 (1) (c), or is the subject of a delinquency petition alleging that the person committed a serious crime specified in s. 48.685 (1) (c), Stats.

DCF 52, Residential Care Centers for Children and Youth, and DCF 59, Shelter Care Facilities

DCF 52 and 59 will be amended to remove obsolete language that requires the background information disclosure form to be notarized.

DCF 40, Review of a Determination of Child Abuse or Neglect

The proposed rules update the population of Milwaukee County from 500,000 to 750,000 in the definition of “agency.”

3. Detailed explanation of statutory authority for the rule

Section 48.195 (6), Stats., provides that the department shall promulgate rules to implement s. 48.195, Stats., relating to taking a newborn into custody.

Section 48.57 (3m) (i), Stats., provides that the department shall promulgate rules to implement s. 48.57 (3m), Stats., including rules to provide assessment criteria for determining whether a relative caregiver who is providing care and maintenance for a child is eligible to receive payments and rules governing the provision of payments for the care and maintenance of a child after the child attains 18 years of age.

Section 48.57 (3n) (i), Stats., provides that the department shall promulgate rules to implement s. 48.57 (3n), Stats., including rules governing the provision of payments for the care and maintenance of a child after the child attains 18 years of age.

Section 48.67 (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 48.685 (9), Stats., provides that the department may promulgate rules necessary for the administration of the background check requirements affecting child welfare programs under s. 48.685, Stats.

Section 48.686 (8), Stats., provides that the department may promulgate rules necessary for the administration of the background check requirements affecting child care programs under s. 48.686, Stats.

Section 48.981 (3) (c) 5m., Stats., as affected by 2013 Wisconsin Act 20, provides that if the county department, department, or licensed child welfare agency makes an initial determination that a specific person has abused or neglected a child, the county department, department, or licensed child welfare agency shall provide that person with an opportunity for a review of that initial determination in accordance with rules promulgated by the department before the county department, department, or licensed child welfare agency may make a final determination that the person has abused or neglected a child.

Section 227.11 (2) (a), Stats., expressly confers rule-making authority on each agency to promulgate rules interpreting the provisions of any statute enforced or administered by the agency if the agency considers it necessary to effectuate the purpose of the statute.

4. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule

150 hours

5. List with description of all entities that may be affected by the proposed rule

Tribal child welfare agencies, county departments of social or human services, hospitals, residential care centers for children and youth, group homes, shelter care facilities, foster homes, and subsidized guardianship homes.

6. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule :

42 USC 671 (20) (D) provides that, as a condition of federal Title IV-E funding, a State plan shall include procedures for a group home, residential treatment center, shelter, or other congregate care setting to conduct criminal records checks, including fingerprint-based checks of national crime information databases, and checks of any child abuse and neglect registry, on any adult working in a group home, residential treatment center, shelter, or other congregate care setting, unless the State reports to the Secretary the alternative criminal records checks and child abuse registry checks the State conducts on any adult working in a group home, residential treatment center, shelter, or other congregate care setting, and why the checks specified in this subparagraph are not appropriate for the State.

7. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

None or minimal economic impact

8. Contact Person:

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