

Chapter DCF 13

BACKGROUND CHECKS FOR CHILD CARE PROGRAMS

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DCF 13.01 Purpose and scope. This chapter is promulgated under the authority of ss. 48.67 (intro.), 48.686, and 227.11 (2) (a), Stats., to specify procedures necessary to implement background checks required under s. 48.686, Stats., for caregivers, noncaregiver employees, and household members at a child care program.

Note: For further information on the scope of the child care background check, see s. DCF 13.02 for definitions of terms used in this section.

History: EmR1918; emerg. cr., eff. 1–30–19; CR 19–089; cr. Register March 2020 No. 771, eff. 4–1–20; CR 20–003; am. Register July 2020 No. 775, eff. 8–1–20.

DCF 13.02 Definitions. In this chapter:

(1) “Agency” means the department, a certification agency, or a school board that establishes or contracts for a child care program under s. 120.13 (14), Stats.

(2) “Background check request form” means a form prescribed by the department 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.

(c) A barrier to a person’s eligibility for employment or contract as a noncaregiver employee.

(4) “Caregiver” means any of the following:

(a) An employee or contractor of a child care program who is involved in the care or supervision of clients.

(b) A person who has direct contact with 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. 48.651 (2), Stats., in a particular county or tribal area.

(6) “Child care background check” means the requirements in s. 48.686, Stats., and this 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 or noncaregiver employees to another child care program.

(8) “Client” means a person who receives direct care from a child care program, from 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.

(b) A child for whom subsidized guardianship payments are being made under s. 48.623, 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.

(11) “Department” means the department of children and families.

(12) “Direct contact” means face-to-face physical proximity to a client that affords the opportunity 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) “Household member” means a person who is age 10 or older, who resides, or is expected to reside, at a child care program, and who is not a client of the child care program or caregiver.

(15m) “Noncaregiver employee” means a person who provides services to a child care program as an employee or a contractor and is not a caregiver, but whose work at the child care program provides the ability to move freely throughout the premises and opportunities for interactions with clients of the child care program.

(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.

(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 or noncaregiver employee.

(c) Residency at a child care program.

(18) “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 noncaregiver employee or a person’s status as a household member 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, with or without reimbursement for expenses, to transport or to work with children in a child care program.

History: EmR1918: emerg. cr., eff. 1–30–19; CR 19–089: cr. Register March 2020 No. 771, eff. 4–1–20; correction in (7) (a), (8) (intro.) made under s. 35.17, Stats., Register March 2020 No. 771; CR 20–003: cr. (3) (c), r. and recr. (4) (a), am. (4) (b), (7) (d), (15), cr. (15m), am. (17) (b), (19) Register July 2020 No. 775, eff. 8–1–20.

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 noncaregiver employee 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, noncaregiver employees, and household members 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>.

History: EmR1918: emerg. cr., eff. 1–30–19; CR 19–089: cr. Register March 2020 No. 771, eff. 4–1–20; CR 20–003: am. (2) Register July 2020 No. 775, eff. 8–1–20.

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.

(2) If the discharge status of the person described in sub. (1) is other than honorable, the department shall make every reason-

able 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.

History: EmR1918: emerg. cr., eff. 1–30–19; CR 19–089: cr. Register March 2020 No. 771, eff. 4–1–20.

DCF 13.05 Determining whether other offenses are substantially related.

(1) CAREGIVERS, NONCAREGIVER EMPLOYEES, AND HOUSEHOLD MEMBERS. To determine whether a caregiver’s, noncaregiver employee’s, or household member’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.

4. The extent to which acceptable performance of the role at the child care program requires 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 following:

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.

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

5. If the person is a caregiver or noncaregiver employee, 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, noncaregiver employee, or household member is or is not substantially related to the care of a child or the activities of the child care program.

History: EmR1918: emerg. cr., eff. 1–30–19; CR 19–089: cr. Register March 2020 No. 771, eff. 4–1–20; CR 20–003: am. (1) (intro.), (c) 5., (2) Register July 2020 No. 775, eff. 8–1–20.

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, noncaregiver employee, or household member 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 preliminarily 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 ELIGIBILITY. (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. (3) within the past 5 years shall supervise a person with preliminary eligibility under sub. (1).

(3) FINAL ELIGIBILITY. (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 program indicating whether the person who is the subject of the report is eligible or ineligible to work or reside at a child care program, without revealing information about any disqualifying offenses or other information regarding the person.

(b) The department shall provide a final written report to the person on whom the child care background check was conducted, indicating whether the person is eligible or ineligible to work or reside at a child care program. If the person is ineligible, the report also shall include information on each disqualifying offense, the right to appeal under s. DCF 13.09, and the right to a rehabilitation review under s. DCF 13.10, if applicable.

(4) TRANSFER OF ELIGIBILITY. A child care program may employ a person or allow the person to reside in the child care program without requesting a new child care background check on the person if all of the following conditions are met:

(a) Within the past 5 years, the person received a final determination of eligibility under sub. (3) to work or reside in a child care program and the determination of eligibility has not been withdrawn or revoked.

(b) Either of the following apply:

1. The person is currently working or residing in a child care program.

2. The person has been separated from employment or residence at a child care program for less than 180 days.

History: EmR1918: emerg. cr., eff. 1–30–19; CR 19–089: cr. Register March 2020 No. 771, eff. 4–1–20; CR 20–003: am. (1) (a) Register July 2020 No. 775, eff. 8–1–20.

DCF 13.07 Reporting requirements. (1) CHILD CARE PROGRAM OFFENSE REPORTING REQUIREMENTS. A child care program shall report to the agency that granted regulatory approval as soon as the child care program knows, or should have known, that any of the following apply to a caregiver, noncaregiver employee, or household member at the child care program:

(a) The person is the subject of a delinquency petition alleging that the person committed a serious crime on or after his or her 10th birthday.

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

(c) The person is the subject of a pending criminal charge alleging that the person committed a serious crime.

(d) The person has been convicted of any crime.

(e) A final substantiated finding has been made that the person abused or neglected a child.

(f) A finding that is comparable to a final substantiated finding has been made in any other jurisdiction.

(g) A unit of government or a state agency as defined in s. 16.61 (2) (d), Stats., made a finding that the person has abused or neglected a client or misappropriated the property of a client.

(h) If a position requires a person to hold a credential, as defined in s. 440.01 (2) (a), Stats., the person has been denied a credential or had a credential restricted or otherwise limited.

(2) OTHER CHILD CARE PROGRAM REPORTING. (a) A child care program shall report to the agency that granted regulatory approval as soon as possible, but no later than the agency's next business day, if any of the following occurs:

1. A person who is age 10 or over and is not a client begins residing at, or is expected to reside at, a child care program.

Note: See the definitions in s. DCF 13.02 (15) and (18).

2. A household member turns 10 years of age.

3. A household member turns 18 years of age.

4. A corporation or limited liability company designates a new person to be subject to the background check.

5. A caregiver, noncaregiver employee, or household member at the child care program changes his or her name.

6. A person's role at the child care program has changed or will be changing and a new eligibility determination may be required for the child care background check.

7. A new caregiver or noncaregiver employee begins work, or a prospective caregiver or noncaregiver employee intends to begin work, at the child care program.

8. A caregiver or noncaregiver employee is no longer working in the child care program or intends to no longer work in the child care program, including the last date of employment.

9. A prospective caregiver or noncaregiver employee was not hired.

10. A former household member is no longer residing at the child care program or a household member intends to no longer reside at the child care program, including the last date of residence.

(b) When a change specified under par. (a) 1. to 7. occurs regarding a child care program, the program shall submit a completed background check request form no later than the agency's next business day for the new person subject to the child care background check and ensure persons comply with the fingerprint requirements within the timeframe specified by the department.

(3) CHILD CARE PROGRAM POLICY. A child care program shall include in its personnel or operating policies a provision that requires a person who is a caregiver specified in s. DCF 13.02 (4) (a) and (b) or a noncaregiver employee to notify the child care program as soon as possible, but no later than the child care program's next working day, if any of the circumstances under sub. (1) (a) to (h) apply to the person.

History: EmR1918: emerg. cr., eff. 1–30–19; CR 19–089: cr. Register March 2020 No. 771, eff. 4–1–20; CR 20–003: cr. (1) (intro.), (2) (a) 2., 3., 5., 7. to 10., (3) Register July 2020 No. 775, eff. 8–1–20.

DCF 13.08 Sanctions. (1) CHILD CARE PROGRAM. (a) A child care program that does any of the following may be subject to one or more of the sanctions specified in par. (b) by the department or the agency that granted the regulatory approval:

1. Allows a person who has not received preliminary determination of eligibility to begin work or reside at the child care program in violation of s. DCF 13.06 (1).

2. Allows a person who has not received a final determination of eligibility to work or reside at a child care program without direct supervision in violation of s. DCF 13.06 (2).

3. Hires, employs, or contracts with a person that the department determined was ineligible to be a caregiver or noncaregiver employee in the child care program.

3m. Permits a person that the department determined was ineligible to be a household member in the child care program.

4. Fails to submit a background check request as required under s. 48.686 (2) (ab), Stats., and s. DCF 13.03.

5. Knows, or should know, that a caregiver, noncaregiver employee, or household member at the child care program com-

mitted an act barred under s. 48.686 (4m) (a) 6., 7., or 8., Stats., including knowingly giving false information on or knowingly omitting material information relating to the child care background check.

6. Fails to comply with applicable reporting requirements under s. DCF 13.07 (1) or (2).

7. Fails to have a policy on reporting changes as required in s. DCF 13.07 (3).

8. Violates any provision in s. 48.686, Stats., or this chapter regarding caregivers, noncaregiver employees, or household members.

(b) Any of the following sanctions may be imposed on a child care program that commits any of the acts described in par. (a):

1. Suspension, nonrenewal, denial, or revocation of regulatory approval.

2. Specific conditions or limitations placed on the regulatory approval.

3. A forfeiture of not more than \$1,000.

4. A requirement that the child care program develop a written plan that specifies corrections that will be made to personnel screening practices, obtain agency approval of the correction plan, and implement the correction plan.

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

(a) Fails to complete and submit the background check request required under s. DCF 13.03.

(b) Knowingly provides false information on or knowingly omits information from the background check request form.

History: EmR1918: emerg. cr., eff. 1–30–19; CR 19–089: cr. Register March 2020 No. 771, eff. 4–1–20; **CR 20–003: am. (1) (a) 3., cr. (1) (a) 3m., am. (1) (a) 5., 8. Register July 2020 No. 775, eff. 8–1–20.**

DCF 13.09 Appeal of background check determinations.

(1) APPEAL RIGHTS. (a) The department shall include a statement of appeal rights with a notification of ineligibility under s. DCF 13.06 (3) to the subject of background check.

(b) The subject of a department determination under s. DCF 13.06 (3) may appeal the determination under s. 48.686 (4s), Stats. Only the subject of the background check may file the appeal.

(2) SUBMISSION OF AN APPEAL. (a) To submit an appeal of an ineligibility determination under s. DCF 13.06 (3), the subject of a background check shall submit a completed petition for appeal form prescribed by the department to the department's postal address, email address, or fax number that is identified in the statement of appeal rights.

(b) An appeal under sub. (1) may be submitted no later than 10 days after the date of the department's ineligibility determination, unless the subject requests, and the department grants for good cause shown, an extension for a specific period of time prior to the expiration of the 10–day appeal period.

(c) If an appeal is not received under sub. (1) within 10 days after the department's ineligibility determination and an extension has not been approved before the expiration of the 10–day appeal period, the department's ineligibility determination made under s. DCF 13.06 (3) is final.

Note: Form DCF–F–5331–E, *Petition for Appeal of Ineligibility Determination*, is available in the forms section of the department website, <http://dcf.wisconsin.gov>. Send the appeal request to the Department of Children and Families, Child Care Background Unit, P.O. Box 8916, Madison, WI 53708–8916; email DCFPlc@BECR-CBU@wisconsin.gov; or fax (608) 422–7155.

(3) DEPARTMENT REVIEW OF APPEALS. (a) The department shall notify the subject of the background check that his or her appeal request under sub. (2) has been received within 7 business days after receipt.

(b) The department shall review each timely appeal request under sub. (2) and issue a written appeal decision within 30 days after receiving the appeal request. The decision notice shall

include information on the right to another appeal by requesting a reconsideration under sub. (4).

Note: Send the reconsideration request to the Department of Children and Families, Assistant Secretary, P.O. Box 8916, Madison, WI 53708–8916; email DCFMBChildcareEligibilityAppeals@wisconsin.gov; or fax (608) 422–7161.

(4) RECONSIDERATION OF AN APPEAL. (a) The subject of the background check may request a reconsideration of the department's appeal decision under sub. (3). A request for reconsideration shall be sent to the postal address, email address, or fax number identified in the appeal decision within 30 days after the date on the decision.

(b) The department secretary or the secretary's designee shall review a reconsideration request under par. (a) and issue a written decision. The reconsideration decision shall include information on the right to another appeal by requesting a contested case hearing under sub. (5).

(5) CONTESTED CASE HEARING. The subject of the background check who receives an adverse decision from the department secretary or the secretary's designee under sub. (4) may request a contested case hearing under ch. 227, Stats., and ch. HA 1 within 10 days after the date of the department's reconsideration decision.

Note: Send a request for a contested case hearing to the Division of Hearings and Appeals, 4822 Madison Yards Way, PO Box 7875, Madison, Wisconsin, 53707–7875. The fax number of the division is (608) 264–9885.

History: EmR1918: emerg. cr., eff. 1–30–19; CR 19–089: cr. Register March 2020 No. 771, eff. 4–1–20; **CR 20–003: am. (2) (b), (c) Register July 2020 No. 775, eff. 8–1–20.**

DCF 13.10 Rehabilitation reviews by agency.

An agency may conduct a rehabilitation review for a person who requests a rehabilitation review if the person is eligible under s. 48.686 (5) (a), Stats., and s. DCF 13.11 and is any of the following:

(1) A person who has, or is seeking, regulatory approval from the agency as a caregiver specified in s. DCF 13.02 (4) (c).

(2) A person who is, or is expected to be, a caregiver specified in s. DCF 13.02 (4) (a) or (b) for a child care program that is regulated by the agency.

(3) A person who is, or is expected to be, a household member at a child care program that is regulated by the agency.

(4) A person who is, or is expected to be, a noncaregiver employee for a child care program that is regulated by the agency.

History: EmR1918: emerg. cr., eff. 1–30–19; CR 19–089: cr. Register March 2020 No. 771, eff. 4–1–20; **CR 20–003: am. (3), cr. (4) Register July 2020 No. 775, eff. 8–1–20.**

DCF 13.11 Eligibility for rehabilitation review.

(1) Except as provided under sub. (2), a person may have the opportunity to demonstrate his or her rehabilitation if any of the following apply:

(a) Section 48.686 (4m) (a) 2., 3., or 4. applies to the person.

(b) The person has been convicted or adjudicated delinquent of a serious crime as specified under s. 48.686 (1) (c) 9., Stats., or for a violation of the law of any other state or United States jurisdiction that would be a violation listed in s. 48.686 (1) (c) 9., Stats., if committed in this state, and the person completed his or her sentence, including any probation, parole, or extended supervision, or was discharged by the department of corrections, more than 5 years before the date of the investigation under s. 48.686 (2) (am), Stats.

Note: A table listing child care serious crimes and availability of rehabilitation review for each offense can be accessed at <https://dcf.wisconsin.gov/files/publications/pdf/5206.pdf>.

(2) A person may not have the opportunity to demonstrate his or her rehabilitation if within the preceding 12 months an agency denied the person's request for rehabilitation approval, and the new request is for the same type of regulatory approval, job function, or status as a household member with the same level of direct contact with clients or unsupervised access to clients.

History: EmR1918: emerg. cr., eff. 1–30–19; CR 19–089: cr. Register March 2020 No. 771, eff. 4–1–20; **CR 20–003: am. (1) (intro.), (2) Register July 2020 No. 775, eff. 8–1–20.**

DCF 13.12 Applying for rehabilitation review. To apply for rehabilitation review, a person who is eligible to request rehabilitation review under s. DCF 13.11 shall do all of the following:

(1) Obtain a rehabilitation review application on a form prescribed by the department and submit the completed application to the agency.

Note: Form DCF–F–419, *Rehabilitation Review Application Instructions*, is available in the forms section of the department website, <http://dcf.wisconsin.gov>.

(2) Submit any supporting documents and information required by the rehabilitation review application to the agency.

History: EmR1918: emerg. cr., eff. 1–30–19; CR 19–089: cr. Register March 2020 No. 771, eff. 4–1–20.

DCF 13.13 Agency rehabilitation review process.

(1) **TIME FRAME.** If an application for a rehabilitation review is not complete or any supporting documents or information required in the application are not submitted within 90 days after the date the application was first received by the agency, the request for a rehabilitation review shall be denied, unless the person requesting the rehabilitation review provides a good cause explanation.

(2) **REHABILITATION REVIEW PANEL.** If a person who is eligible for rehabilitation review under s. DCF 13.11 submits an application that is complete under s. DCF 13.12 no later than the deadline in sub. (1), the applicable agency shall appoint a review panel of at least 2 persons to review the information submitted. The panel may request additional information from the person requesting the review or from other agencies or persons familiar with the person.

(3) **REQUESTOR APPEARANCE.** A person for whom a rehabilitation review is conducted under sub. (2) shall be given an opportunity to appear before the review panel to present information and answer any questions the panel members may have. The person's appearance before the review panel may be in person, by telephone, or other technology approved by the agency.

(4) **REHABILITATION REVIEW PANEL.** After reviewing the information obtained, a review panel appointed under sub. (2) shall decide whether the person who is the subject of the rehabilitation review has demonstrated by clear and convincing evidence that he or she is rehabilitated for purposes of receiving regulatory approval, employment as a caregiver or noncaregiver employee, contracting with a child care program to be a caregiver or noncaregiver employee, or residing at a child care program. The panel shall consider at least the following factors, as applicable:

(a) Personal references and comments from employers, persons, and agencies familiar with the applicant and statements from therapists, counselors, and other professionals.

(b) Evidence of successful adjustment to, compliance with, or proof of successful completion of parole, extended supervision, probation, incarceration, or work release privileges.

(c) Any investigations or enforcement actions by a regulatory agency for substantial noncompliance with applicable laws.

(d) Any subsequent contacts with law enforcement agencies, including arrests, charges, convictions, pending criminal or civil arrest warrants, civil judgments, or other legal enforcement actions or injunctions against the person.

(e) Any aggravating or mitigating circumstances surrounding the barring crime, act, or offense.

(f) 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, and demonstrated ability to develop positive social interaction and increased independence or autonomy of daily living.

(g) The age of the person at the time of the offense and the amount of time between the crime, act, or offense and the request for rehabilitation review.

(h) Whether the person is on the sexual offender registry under s. 301.45, Stats., or on a similar registry in another jurisdiction.

(i) A victim's impact statement, if appropriate.

(j) The person's employment history, including evidence of acceptable performance or competency and dedication to the person's profession.

(k) The nature and scope of the person's contact with clients in the position requested.

(L) The degree to which the person would be directly supervised or working independently in the position requested.

(m) The opportunity presented for someone in the position to commit similar offenses.

(n) The number, type, and pattern of offenses committed by the person.

(o) Successful participation in or completion of recommended rehabilitation, treatment, or programs.

(p) Unmet treatment needs.

(q) The person's veracity.

(5) **REVIEW PANEL DECISION.** (a) *Scope.* An agency review panel may grant rehabilitation approval only within the scope of the agency's regulatory authority.

(b) *Deferral.* A review panel may defer a final decision under sub. (4) for a period of not more than 6 months, unless the person who is the subject of the rehabilitation review agrees to a longer time period.

(c) *Written decision.* A review panel shall issue a written decision under sub. (4) that includes the following, as applicable:

1. 'Approval.' An approval shall state all of the following:

a. The type of child care program to which the decision applies.

b. The types of approval that were requested and are approved in the decision, such as regulatory approval, employment as a caregiver or noncaregiver employee, contract to be a caregiver or noncaregiver employee, or status as a household member at a child care program.

c. Any conditions or limitations placed on the approval.

Note: Examples of limited approval include approval for employment in specific child care roles.

2. 'Deferral.' A deferral shall state the reason for the deferral and the date that the review panel will reconvene to review any new information affecting the request.

3. 'Denial.' A denial shall include all of the following:

a. The type of child care program to which the decision applies.

b. The types of approval that were requested and are denied in the decision, such as regulatory approval, employment as a caregiver or noncaregiver employee, contract to be a caregiver or noncaregiver employee, or status as a household member at a child care program.

c. The reason for the denial.

d. Notice that the person may appeal the denial and a summary of the appeal process under s. 48.686 (5c), Stats., and s. DCF 13.14.

(6) **REVIEW PANEL DECISION DISTRIBUTION.** (a) A review panel shall send a decision made under sub. (5) to the person who is the subject of the rehabilitation review and, if requested, a copy to entities specified by that person.

(b) Within 10 days after sending a rehabilitation review decision to the subject of the rehabilitation review under par. (a), the review panel for an agency shall send all of the following to the department:

1. A copy of the review panel's decision.

2. A copy of the person's application under s. DCF 13.12.

3. A completed rehabilitation review decision report on a form prescribed by the department.

Note: Form DCF–F–418–E, *Rehabilitation Review Panel Decision Report*, is available in the forms section of the department website at <http://dcf.wisconsin.gov>. The materials should be sent to Attn: Rehabilitation Review Coordinator, Office of Legal Counsel, Department of Children and Families, P. O. Box 8916, Madison, WI 53708–8916.

(7) RETENTION OF REHABILITATION DECISION DOCUMENTATION.

(a) The agency shall retain a copy of a written decision by a rehabilitation review panel and any decisions from filed appeals that may result.

(b) The agency shall retain a copy of a rehabilitation review request and all materials or information obtained or notes made as part of a rehabilitation review decision for at least 10 years after the decision is made and any appeals are finalized.

History: EmR1918; emerg. cr., eff. 1–30–19; CR 19–089; cr. Register March 2020 No. 771, eff. 4–1–20; CR 20–003; am. (4) (intro.), (5) (c) 1. b., 3. b. Register July 2020 No. 775, eff. 8–1–20.

DCF 13.14 Appealing a rehabilitation review panel's denial. (1) (a) A person who is denied rehabilitation approval under s. DCF 13.13 may submit a written request for review of the decision by the secretary or the secretary's designee under s. 48.686 (5c), Stats. A request for review shall be submitted within 10 days after the date of the written decision by the rehabilitation panel. No new evidence may be submitted.

(b) A person who appeals under this subsection shall bear the burden of proving, by a preponderance of the evidence, that the rehabilitation review panel for the agency erroneously exercised its discretion in deciding that the person did not show sufficient evidence to demonstrate that he or she is rehabilitated.

Note: Pursuant to s. 48.686 (5c), Stats., submit an appeal to the following, as appropriate:

1. To appeal a denial by a rehabilitation review panel for the department or a certification agency, send the request to the Department of Children and Families, Office of Legal Counsel, P.O. Box 8916, Madison, WI 53708–8916.
2. To appeal a denial by a rehabilitation review panel for the school board, send the request to the State Superintendent of Public Instruction, 125 South Webster Street, Madison, WI 53703; or call (608) 266–3390.
3. To appeal a denial by a rehabilitation review panel for a tribe, send the request to the director of the appropriate tribe or the director's designee.

(2) A person who receives an adverse decision from the secretary of the department or the secretary's designee under sub. (1) may request a contested case hearing under ch. 227, Stats., and ch. HA 1 within 10 days after the date of the written decision by the department.

Note: Send a request for a contested case hearing to the Division of Hearings and Appeals, 4822 Madison Yards Way, PO Box 7875, Madison, Wisconsin, 53707–7875. The fax number of the division is (608) 264–9885.

History: EmR1918; emerg. cr., eff. 1–30–19; CR 19–089; cr. Register March 2020 No. 771, eff. 4–1–20.

DCF 13.15 Compliance with rehabilitation approval; withdrawal. (1) COMPLIANCE WITH APPROVAL CONDITIONS. A person whose rehabilitation is approved under s. DCF 13.13 shall comply with any conditions and limitations imposed with that approval.

(2) WITHDRAWAL OF REHABILITATION APPROVAL. (a) An agency that granted a person a rehabilitation approval under s. DCF 13.13 may withdraw the rehabilitation approval if the person has done any of the following:

1. The person has failed to comply with or abide by any conditions or limitations imposed with the rehabilitation approval.
2. The person knowingly submitted false information or withheld pertinent information that could have or would have affected the review panel's decision to grant the rehabilitation approval.

(b) If an agency withdraws a rehabilitation approval under par. (a), it shall issue a written notice that explains the reasons for the withdrawal and informs the person whose approval has been withdrawn that he or she may appeal as provided in s. DCF 13.14.

(c) If an agency withdraws rehabilitation approval and the withdrawal results in a bar to regulatory approval, employment as

a caregiver or noncaregiver employee, contracting with a child care program to be a caregiver or noncaregiver employee, or status as a household member at a child care program, the agency that withdraws the rehabilitation approval shall immediately report the withdrawal to the department.

(3) INFORMING THE GRANTING AGENCY. A child care program or agency that becomes aware that a person has violated the conditions or limitations of a rehabilitation approval that was granted by another agency shall inform the agency that granted the approval of the violation.

Note: Send reports of withdrawn rehabilitation approval to Attn: Rehabilitation Review Coordinator, Department of Children and Families, Office of Legal Counsel, P.O. Box 8916, Madison, WI 53708–8916.

History: EmR1918; emerg. cr., eff. 1–30–19; CR 19–089; cr. Register March 2020 No. 771, eff. 4–1–20; CR 20–003; am. (2) (c) Register July 2020 No. 775, eff. 8–1–20.

DCF 13.16 Permissive acceptance of a rehabilitation approval. (1) SCOPE. (a) 1. An agency may accept a rehabilitation approval granted to a person by another agency if the previous rehabilitation approval applies to the same type of child care program and the same type of approval.

Note: For example, a certification agency in County B may accept a rehabilitation approval to be a household member in a certified child care home if a certification agency in County A granted the same type of approval.

2. A certification agency may accept a rehabilitation approval granted to a person by the department if the previous rehabilitation approval applies to the same type of approval for a child care center that is licensed to care for 4 to 8 children under s. 48.66, Stats.

3. A rehabilitation approval granted by a tribe that conducts rehabilitation reviews pursuant to a plan approved by the department under s. 48.686 (5d), Stats., may not be accepted by another agency.

Note: A rehabilitation approval granted by a tribe under this chapter may be accepted by another agency.

(b) An agency that accepts a rehabilitation approval granted by another agency shall enforce any limitations or conditions that were included in the approval if the conditions or limitations imposed by the agency that granted the approval have not been terminated or have not expired.

(2) PROCESS. (a) If an agency learns that a person has had a previous rehabilitation review, the agency shall contact the department to request a copy of the rehabilitation decision and information on the status of any rehabilitation approval.

(b) If the previous rehabilitation review decision was an approval and the approval has not been withdrawn, the agency shall determine whether the approval is eligible to be accepted under sub. (1).

(c) If the previous rehabilitation approval is eligible to be accepted under sub. (1), the agency shall determine whether to accept or deny the previous approval.

(3) INELIGIBILITY OR DENIAL. If an agency determines that a person's previous rehabilitation approval may not be accepted under sub. (1) or the agency denies an eligible rehabilitation approval under sub. (2) (c), the agency shall inform the person of his or her right to submit an application for a new rehabilitation review under s. DCF 13.12 and shall process a submitted application under s. DCF 13.13.

History: EmR1918; emerg. cr., eff. 1–30–19; CR 19–089; cr. Register March 2020 No. 771, eff. 4–1–20; correction in (1) (a) 3. made under s. 35.17, Stats., Register March 2020 No. 771.

DCF 13.17 Fees. The department may charge a fee for the cost of background checks required under s. 48.686, Stats. A child care program shall submit all fees required by the department as directed by the department.

History: EmR1918; emerg. cr., eff. 1–30–19; CR 19–089; cr. Register March 2020 No. 771, eff. 4–1–20.