



Wisconsin Department of Children & Families
Protecting Children. Strengthening Families. Building Communities.

Child Care Certification

Caregiver Background Check

Manual

Bureau of Early Childhood Education

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Purpose of the Caregiver Manual

The certifying agencies must conduct caregiver background checks on providers who are applying for child care certification and at renewal as well as individuals (non-client residents, employees, volunteers, etc) associated with the program/home. This manual was created to give the child care certifiers a thorough overview of the Caregiver Law and how the law pertains to child care certification.

The certification workers are required to attend department approved new worker training on certification policy prior to or within 6 months after hire of after taking over the duties as the certifier. The Caregiver Law is covered in the policy training. Due to time constraints in that training session, the law is not covered in great detail so the manual is necessary. The manual also includes links to additional resources available for the certifiers.

List of Acronyms

The following is a list of acronyms used in this chapter. Acronyms are also identified the first time they appear in each of the sixteen major sections of the chapter, including the section titles. The same is true in the Table of Contents

- BECE [Bureau of Early Childhood Education](#)
- BECR [Bureau of Early Care Regulation](#)
- BID [Background Information Disclosure](#) form (F-82064A)
- BMCW [Bureau of Milwaukee Child Welfare](#)
- BQA [Bureau of Quality Assurance](#)
- CAN Child Abuse or Neglect
- CBC Caregiver Background Check
- CCAP [Wisconsin Circuit Court Automation Program](#)
- CCPC [Child Care Provider Certification System](#)
- CIB [Crime Information Bureau \(in DOJ\)](#)
- CLD Children's License Denial Database
- CPS Child Protect Service
- DCF [Department of Children and Families](#)
- DHS [Department of Health Services](#)
- DOJ [Department of Justice](#)
- DRL [Department of Regulation and Licensing](#)
- DWD [Department of Workforce Development](#)
- FBI [Federal Bureau of Investigation](#)
- IBIS Integrated Background Information System
- OLC [Office of Legal Counsel](#)
- RR Rehabilitation Review
- Wisacsis Wisconsin Automated Child Welfare Information System
- The Department Department of Children and Families

Caregiver Background Checks

Overview

On October 1, 1998, a law was enacted that initiated a new program of background checks for caregivers in certain entities regulated by the State. The Caregiver Law was established 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. The Caregiver Law is implemented under [s.48.685](#) and s.50.065, Wis. Stats., and Chapters [DHS 12](#) and 13, Wis. Admin. Code.

The Caregiver Law is intended to protect adult and juvenile clients in care-giving settings (health care, certified and licensed child care, licensed residential and foster care) from abuse, neglect or misappropriation of their property by licensed, certified or employed caregivers. The Caregiver Law affects various adult and children's programs that are administered by several departments and divisions within them. This manual material describes only procedures related to child care programs certified by counties and tribes as required by [s.48.651](#), Wis. Stats. This includes the following providers:

- Certified family providers
- Certified school age programs

The Caregiver Law requires employers, licensing, school boards, certain temporary employment agencies, child placing agencies and certifying agencies to:

- Conduct caregiver background checks (CBCs) at least every four years;
- Closely examine the results of the CBC for criminal convictions or substantiated findings of child abuse or neglect or misconduct by a governmental agency; and
- Make certification decisions based on the results of the CBC in accordance with the requirements and prohibitions in the law.

The certifying agency conducts background checks on applicants, certified providers, employees, volunteers and any household members (non-client residents) of the home/program including certain children age 10 through 17 and minor caregivers employed in a home/program.

The screening tool that begins the CBC process is the [Background Information Disclosure](#) (BID) form (F82064). The person regarding whom the background check is being conducted completes the BID. The certifying agency reviews the BID and, when required, conducts a caregiver background checking using the online system. The information submitted by the certifying agency into the online system is transmitted to the Department of Justice (DOJ), Crime Information Bureau (CIB) and is matched against the DOJ adult and, for child care facilities, juvenile criminal history database. In addition, other records are automatically checked through a data interface between DOJ, DHS and the Department of Regulation and Licensing. This interface is called the Integrated Background Information System or IBIS.

The requester receives two responses to the Criminal History Record Request, the DOJ Response that identifies criminal history and the IBIS letter from DHS that reports information about:

- Abuse, neglect or misappropriation of client property that may be contained in the DHS Adult Caregiver Reporting System;
- Nurse Aide Directory Status;
- Professional license and credential records from the Department of Regulation and Licensing;
- Employment or contract prohibitions and regulatory actions taken by the DHS, counties and child placing agencies including license denials or revocations or non-client residence prohibitions related to Ch. [DHS 12](#), Wis. Admin. Code;
- Any substantiated reports of child abuse or neglect against the person that may be available; and
- Rehabilitation review findings.

When the criminal history documents that a person has been convicted of certain crimes or offenses specified in the [Offenses List](#) in [DHS 12](#), Appendix A and in s.[48.685](#)(1)(c), Wis. Stats., that person is barred from being certified or employed as a caregiver, or from living as a non-client resident in a certified home/program. The person remains permanently barred unless s/he applies for, and receives, rehabilitation review approval.

Rehabilitation review is a process that allows a barred individual an opportunity to demonstrate to the country/tribe or DHS, through clear and convincing evidence that s/he is rehabilitated and not likely to repeat the conduct that led to the criminal conviction or other offense.

Only a conviction or finding for an offense on the [Offenses List](#) or a comparable crime or offense from another state or other jurisdiction bars employment, regulatory approval and non-client residency. However, when a person is found to have a conviction for any crime that is not on the [Offenses List](#), the certifying agency may investigate the conviction to determine whether it is “substantially related” to the person’s ability to care for children or to perform the job for which they have applied for in a certified school age program. If so, the certifying agency should not certify the person. A determination of substantial relationship can have the same effect as a bar, but this determination is not subject to the rehabilitation review process. The appeals in these cases will follow [Chapter 68](#).

DHS has posted a web cast on the Caregiver Law. The web cast can be found at: <http://media1.wi.gov/DHFS/Viewer?peid=b334112d-847d-4622-a139-5f029827bf68>

Procedures

1. Intent of the Caregiver Law

As a means of protecting vulnerable children in certified programs, the Caregiver Law prohibits the certifying agency from certifying a person; and certified school age programs from employing or contracting with persons who will have regular, direct contact with the program’s clients (see 2.2.3. below); and persons who are not clients [non-client residents (see 2.2.2. below)] from residing on the premises of a home when the certifying agency knows or should have known that the person has been:

- Convicted of a serious crime listed in s. [48.685\(1\)\(c\)](#), Wis. Stats., (and comparable crimes and offenses from other states or other jurisdictions) or has been adjudicated delinquent for committing a serious crime; or
- Found to have abused or neglected a child under the child abuse under s.[48.981\(3\)\(c\)](#), Wis. Stats.;
- Found by a unit of government or a state agency to have abused or neglected a client or misappropriated the property of a client as defined under s16.61(2)(d), Wis. Stats.; or,
- When a credential is required, the person's credential is not current or is limited in a way they restricts the person's ability to adequately care for a client.

Chapter [DHS 12](#), Wis. Admin. Code, Appendix A, "Offenses Affecting Caregiver Eligibility", Part II., Entities and Programs Serving Any Clients Under the Age of 18, lists the specific offenses (the [Offenses List](#)) that affect employment or certification decisions. Any person with a conviction(s) or finding(s) identified on the [Offenses List](#) is permanently barred from being certified or employed as a caregiver or a non-client resident in county/tribal regulated programs until that person has received approval through the rehabilitation review process in accordance with [DHS 12](#), Wis. Admin. Code. (See 12. below.)

Note: Throughout this document, the term "offenses" made in reference to the content of the Offenses List will mean both serious crimes and a finding of child abuse and neglect.

Only those offenses on the [Offenses List](#) and comparable crimes and offenses from other states or other jurisdictions are statutory bars to employment, regulatory approval and non-client residency. However, the certifying agency may deem any conviction for a crime not on the [Offenses List](#) to be substantially related to the duties or the circumstances of the job. (See 11. below.) A determination of substantial relationship can have the same effect as a bar, but this determination is not subject to the rehabilitation review process.

1.1. Caregiver Background Check Defined

A caregiver background check (CBC) is the process by which the certifying agencies gather relevant information from numerous sources in order to determine whether an individual is barred from being a certified provider, caregiver, employee or non-client resident under provisions of the Caregiver Law or has an offense that substantially relates to child care.

Wisconsin statute, s.[48.685\(2\)\(am\)](#), defines a CBC as:

- A criminal history search from the records maintained by the Department of Justice. (See 6. and 7. below.);
- Information that is contained in the registry under s.146.40(4g), Wis. Stats., regarding any findings against the person;
- Information maintained by the Department of Regulation and Licensing regarding the status of the person's credentials, if applicable;
- Information maintained by the DHS regarding any substantiated reports of child abuse or neglect against the person. [The certifying agency obtains this information directly from the county Child Protective Services Unit. (See 8. below.)]; and
- Information maintained by the DHS under Chapter 48 regarding any denial to the person of a license, continuation or renewal of a license, certification, a contract to operate an

entity; or denial of employment or a contract or permission to reside at an entity because the person has committed an offense that creates a bar under the Caregiver Law. (This information is found through a search of the Integrated Background Information System called IBIS.) (See 6. and 7. below.)

1.2. Caregiver Background Check Process

1.2.1. At Initial Application – New Applicant

A CBC conducted at initial application always includes the following:

- A [Background Information Disclosure](#) (BID) form (F-82064A) for the applicant and all household members 10 and older (See 5. below.) as well as any employee, substitute volunteer, etc who is expected to have contact with children in care.
- A DOJ Criminal History Record Search (See 6. and 7. below.) and an Integrated Background Information System (IBIS) search performed in conjunction with the DOJ Criminal History Record Search for the applicant and all adults and certain minor household members
- Child Protective Services check request. (See 8.1. below.) for the applicant and all household members:

Depending on the unique circumstances of the application, it may also include any of the following:

- Criminal record searches in other states. (See 9.1. below.);
- National FBI criminal record search using fingerprints. (See 9.2. below.);
- Military discharge records. (See 9.3. below.)
- Wisconsin Circuit Court Record Search. (See 9.4. below.);
- Records from the clerk of courts/tribal jurisdiction. (See 9.4.1. below);
- Law enforcement arrest records. (See 9.5. below.);
- County or tribal records including protective service investigation records. (See 8.2.1. below.)

1.2.2. At Certification Renewal

A CBC conducted at re-certification (every 4 years) when required (see 4. below), always includes for the provider, employee, volunteer, etc, and all household members

- A [Background Information Disclosure](#) (BID) form (F-82064A) (see 5. below); and

for the provider, all adults and certain minor household members it also includes:

- A DOJ Criminal History Record Search;
- An Integrated Background Information System (IBIS) search that is automatically included in the DOJ Criminal History Record Search Request; and,

depending on information revealed in the BID or obtained from other sources, it may include any of the other background information sources outlined in 1.2.1. above.

Child Protective Services check request. (See 8.1. below.) for the applicant and all household members must be conducted every 2 years per DCF 202.04(7)(b)2.f..

2. Programs and Persons Covered by the Caregiver Law

2.1. Programs Covered Under the Caregiver Law

The Caregiver Law identifies care-giving “entities” that are covered under the law. The term “entity” is defined as any provider, facility, agency, organization or service that is licensed, certified by county/tribal agency, or registered with the Department of Health Services or the Department of Children and Families. The Caregiver Law also covers entities regulated by the Department of Regulation and Licensing, child care providers certified by county social/human services agencies or tribal agencies; child care providers contracted school boards; and foster homes and treatment foster homes licensed by county social/human services agencies, tribal agencies or by BECR licensed private child placing agencies.

Throughout this document, the more commonly used terms, “provider” or “program” will be used to denote the county/tribe regulated entities addressed by the Caregiver Law. These include:

- Certified family child care homes;
- Certified school age programs

2.2. Persons Who are Required to Have a Caregiver Background Check

Caregiver background checks (CBCs) are required for all caregivers and some non-client residents of covered facilities. (See 2.1. above.)

2.2.1. Caregiver Defined

A caregiver is defined as any of the following:

- A person who is, or is expected to be, employed or under contract with a program and who is, or is expected to be, under the program’s control and who has, or is expected to have, regular, direct contact (see 2.2.3. below) with the program’s clients;
- A person who has, or is seeking, certification or contract to operate a program covered under the caregiver law;
- The owner or administrator of a program, whether or not that person has regular, direct contact with clients;
- An adult or minor student who is, or will be, completing an internship, practicum or clinical training at a certified program;
- A volunteer if the person has direct contact with the children in care.

A caregiver does not include:

- A person who performs solely clerical, administrative, maintenance or other support functions for a program and who is not expected to have regular, direct contact with clients (see 2.2.3. below) or the personal property of clients;
- A person who is employed by or under contract with a program to provide infrequent or occasional services, such as delivering items to the program, equipment maintenance, grounds keeping, construction or other similar services that are not directly related to the care of a client.

2.2.2. Non-client Resident Defined

A non-client resident is a person 10 years of age or older who is not a client of the program but who resides in the certified home and is expected to have regular, direct contact with clients. (See 2.2.3 below.) For example, this may be the spouse, live-in friend, child or other relative of a certified provider. This also includes individuals that might reside in the home part-time (shared placement situations).

2.2.3. Regular, Direct Contact Defined

Regular contact means contact that is planned, scheduled, expected or periodic. Direct contact with a client, as defined in s. [48.685](#), Wis. Stats., means the face-to-face physical proximity to a client that affords a person the opportunity to commit abuse or neglect of a client or to misappropriate the property of a client.

3. Conducting Background Checks

Complete caregiver background checks (CBCs) are required for all providers, employees, other caregivers and some non-client residents of entities covered by the Caregiver Law. (See 2.1. above.) The certifying agency is responsible under the authority of s. [48.685](#)(2)(am), Wis. Stats., for completing CBCs on the following individuals whether or not they have regular, direct contact with children in care. (See 2.2.3. above):

- The individual or sole proprietor who is the applicant/certified provider;
- For corporations (usually certified school age programs):
 - The president/chairperson of the board of directors who submits the application for school age certification
- Non-client residents of certified programs who are:
 - Age 18 and over; or
 - Age 10 through 17 and answer yes to any question in Section A of the [Background Information Disclosure \(BID\)](#) form. (See 3.3. below); or
 - Age 10 through 17 and there is reason to believe a complete CBC should be completed. (See 3.3. below.); or
- Child care assistants/helpers under age 18 (see 3.3. below).

3.1. When the Applicant/Certified Provider Represents a Corporation

When the applicant/certified provider is a corporation (usually certified school age programs), the president of the board of directors, or chairperson, signs the application and most commonly completes the BID (see 5. below). The applicant must also submit BIDs for all employees of the program. The certifying agency conducts CBC on the employees and the applicant.

3.2. Non-client Residents

In addition to applicants/currently certified providers, the certified agencies must conduct CBCs on non-client residents of certified programs. (See 2.2.2. above.) Note: for child care programs, the CBC includes a search of both adult and juvenile criminal records.

3.2.1. Minor Non-client Residents

All minor non-client residents aged 10 through 17 must submit a [Background Information Disclosure](#) form (BID) as required for any adult non-client resident. (See 4. below.) A parent or guardian may sign the BID for the minor or the minor can sign his/her own BID. No further CBC processing is necessary unless:

- The minor answered yes to any question in section A of their BID; or
- There is reason to believe a complete CBC should be completed; or,
- The non-client resident resides in a child care program, and is a helper or assistant (See 3.3. below.)

3.3. Minor Employees or Students

Minor employees, volunteers and students must have a complete CBC regardless of their BID outcome. If this is a certified school age program, the certifier contacts the program if the DOJ response reveals a barred crime (see 6., 7. and 10. below) but, because of confidentiality requirements, does not forward the actual documents to program. The certifier should explain to the provider that the CBC has revealed that the minor has a history that requires him/her to receive rehabilitation review approval (see 12. below) before he/she can be a caregiver in a certified program. If the DOJ response indicates a crime that is not a barred crime but which may be substantially related to the care of children (see 11. below), the certifier should advise the provider that the CBC information suggests a need for discussion with the juvenile about the juvenile's record as it may be substantially related to the care of children.

4. Frequency of CBC

4.1. [Background Information Disclosure](#) (BID) - Every Two Years

The certifying agency require [Background Information Disclosure](#) (BID) forms (see 5. below) from the provider, employees, volunteers, etc, and non-client residents, including children aged 10 through 17 at the point of initial application and every 2 years thereafter, with recertification,

in accordance with s. [48.685\(6\)\(a\)](#), Wis. Stats. The certifying agencies should include the BID forms with the re-certification packets.

The certifier reviews the initial/recertification application to determine whether all the required BIDs have been submitted. At initial application, with the exception of non-client residents aged 10 through 17, complete CBCs are conducted on all persons submitting a BID. (See 1.2.1. above.)

Complete CBCs must be processed every four years in conjunction with recertification. (See [4.2.](#) below.) Note: DCF 202 (certification rules) requires agencies to conduct the CPS check every two years.

4.2. Schedule for Ongoing CBCs

The certifying agency must conduct complete CBCs (DOJ and DHS) on all required persons (see 3. above) at the point of initial application and, from that point forward, every 4 years from the first background check date (in conjunction with every other recertification process). The CCPC system automatically enters the 'date of next check' into the system and send alerts to the certifier. In addition, a CBC is conducted as follows:

- A provider submits a [Background Information Disclosure](#) (BID) form, as is required, when a person begins residing at, or is expected to reside at, or is hired as an assistant/substitute in a certified home/program; or
- A corporation (school age program) indicates that the person on whom the most recent CBC was conducted (the president/chairperson of the board of directors or his/her designee) has changed or new staff has been hired (See 3. above.)

Additionally, s. [48.685\(3\)](#) (a), Wis. Stats., provides the authority for a certifier to conduct a CBC at any time should the certifier deemed it appropriate. The certifier may, for example, require a provider or non-client resident to submit a BID and run a CBC as a result of information received in a complaint; or, when an applicant or the provider reports any of the following relative to themselves or a non-client resident in their home/program.

- The person has been convicted of any crime; or
- The person has been or is being investigated by any governmental agency for any other act, offense, or omission, including an investigation related to the abuse or neglect, or threat of abuse or neglect, to a child or other client; or an investigation related to the misappropriation of a client's property; or
- The person has a substantiated finding of abuse or neglect of a client or of misappropriation of a client's property made against them by a governmental agency; or
- In the case of a position for which the Department of Regulation and Licensing must credential the person, and the person has been denied a license, or the person's license has been restricted or otherwise limited.

5. [Background Information Disclosure](#) (BID) Form (F-82064A)

The screening tool that begins the caregiver background check (CBC) process is the [Background Information Disclosure](#) (BID) form (F-82064A). The BID asks the person to disclose

any pending criminal charges or conviction(s) for crimes and/or offenses anywhere, including in federal, state, local, military and tribal courts. A “clean” BID is one in which the person reports no convictions or offenses. The provider and all non-client residents, including children age 10 through 17 must complete a BID and submit it to the certifying agency at the time of initial application and at two-year intervals thereafter in conjunction with re-certification. **Note:** A complete CBC must be conducted at four-year intervals in conjunction with every other recertification unless the BID received at the two-year interval is not a “clean” BID.

When an initial/re-certification application is received in the certifying agency, the certifier reviews the application to determine whether all the required BIDs have been submitted. The certifier also determines if there is a need to conduct an out-of-state CBC for anyone listed on the application. (See 9.1. below.)

5.1. Applicant/Certified Provider Fails to Submit the Required BID(s)

If a BID(s) is missing or not included, the certifying agency contacts the applicant either by writing or by phone. Many agencies use a ‘Missing Application Items’ form where the certifying agency can list the missing items and the time frame when the items need to be submitted to the agency. If the contact is done in writing, a copy of the form should be placed in the provider’s file. If the certifier contacts the provider by phone, date and time of the contact should be recorded either in the file or CCPC comments section. The agency should not conduct the background check until all of the required BIDs are submitted. **Note:** Occasionally, the applicant/certified provider has not submitted a BID because another agency has obtained the CBC. A BID must always be submitted but, in some cases, the certifying agency can accept the DOJ criminal record search and IBIS results obtained from another governmental agency (such as licensing). (See 6.1.1. below.)

5.2. False Information Provided on the BID

Any person who gives false information, knowingly omits information, or fails to report a subsequent offense is subject to denial or revocation of their certification; denial or termination of non-client residency in the home, termination of employment or special conditions or limitations restricting their contact with clients. If the decision is to deny the application or revoke the certification, the certifier does so citing as the basis s. Wis. Stats., respectively, plus cites any appropriate rule.

The certifier enters the denial or revocation information into CCPC, changing the category status to “Cert/license revoked – DHS 12 –Other” or “Denial – DHS 12 Other”.

5.3. Incomplete BID

If a BID is submitted with some of the identifying information missing, but the missing information is available on the application (i.e., name, birth date, gender, address, etc.), the certifier can take the missing information from the application and process the DOJ Criminal History Record Search (See 6. below.) **Note:** The certifier should not write the missing information on the BID form itself, but can sign and date a notation indicating that missing

information was obtained from the application. If, however, the BID is not signed or responses are missing from Section A or B, or military discharge papers are not included when required, the BID must be returned to the person who submitted it for completion. (See 5.1. above.)

6. DOJ/IBIS Search Request

The primary source for obtaining criminal history information is the Wisconsin Department of Justice (DOJ), Crime Information Bureau (CIB). The CIB holds the central, criminal fingerprint repository for Wisconsin. Beginning in 1971, Wisconsin law enforcement agencies were required to submit arrest fingerprint cards. Arrests without supporting fingerprints are not included in the criminal history database. [This is why occasionally arrests may show up in circuit court records (see 9.4. below) and not on DOJ records.] The computerized criminal history database contains detailed information regarding arrests, arrest charges, prosecution, court findings and sentences, and state correctional system admissions and releases. The database is an accumulation of information submitted by Wisconsin law enforcement agencies, prosecutors, circuit courts and the Wisconsin Department of Corrections. An extraordinary effort is invested to make sure that all information about a single person goes into a single record.

A request to DOJ for a criminal history record search matches against the adult and, when the caregiver background check (CBC) is being performed on persons in a child care program, also against the juvenile criminal record database. When requested, the DOJ search also initiates a search of the DHS Integrated Background Information System (IBIS). Unlike the DOJ criminal history record search, the IBIS search reveals non-criminal history. It reveals current or past regulatory actions and the credentialed or non-credentialed employment status of the subject of the search. (See 7.2. below.)

In addition to the DOJ criminal history record search there are other sources of criminal history background that certifiers may access. When warranted, criminal history information is requested from other states (see 9.1. below), and/or from the FBI's national fingerprint database. (See 9.2. below). Certifiers may also access the Wisconsin Circuit Court Automation Program (CCAP) for information (see 9.4. below), obtain law enforcement arrest records (see 9.5. below).

6.1. Submitting the Request to DOJ

Most certified agencies are conducting these checks online. If your agency is still conducting the check on paper, here is the information how to gain online access: Log into <http://wi-recordcheck.org/>. The agency can request an account with CIB. Once the account has been set up, the certifying agency can complete the CBC on-line and the request will be transmitted electronically to DOJ. The certifying agency is automatically billed for the search when the certifier enters the billing code and the agency PIN. The certifier follows the appropriate screen and keys in the requested data about the subject of the DOJ search. Entry of the social security number is not required but is very helpful to get an accurate result. If aliases are known, they should be entered. The DOJ criminal history data search is a soundex system based on the subject's name. This means that all of the vowels in the name are eliminated which enables the system to match names even when they are misspelled. The search of the IBIS system does not require a separate request form. The certifier checks a box on the electronic DOJ form or

specifies this request at sign-on to the DOJ system. The results of the on-line criminal history for adults and IBIS search results are usually available immediately. (See 7. below.)

6.2. DOJ/IBIS Records from Another Agency

An applicant/certified provider may also be a licensed child care provider or be licensed, for example, as a foster home. It is possible, therefore, that an applicant/certified provider may have had a CBC conducted by another governmental agency within the past four years.

The certifying agency can accept DOJ criminal history record search and IBIS search results obtained by another governmental agency if the search was completed within six months from the date the certifying agency would submit the search request to DOJ. **Note:** The certifying agency should only accept results directly from another governmental agency that obtained them from DOJ and not, for example, from a provider or the subject of the search.

Even if a CBC was conducted elsewhere within the past six months, in all cases, a new BID must be obtained from the applicant and all non-client residents. If the BID is not clean (contains yes answers in Section A), the certifying agency must process a new criminal background record search through DOJ. (See 6.1. above.) If a BID(s) is missing the certifier must request the missing items from the applicant/certified provider. (See 5.1. above.)

If the certifier cannot obtain the DOJ response from the other agency, or has reason to believe that it is no longer accurate, s/he should request a new CBC to DOJ. (See 6.1. above.)

7. DOJ/IBIS Search Results

When Department of Justice (DOJ) has processed the criminal history record search, and Department of Health Services (DHS) has processed the Integrated Background Information System (IBIS) search, the certifying agency will receive and print one DOJ and one IBIS response per requested entry. The certifier is responsible for entering the background check dates into CCPC.

If the DOJ criminal history record search reveals a conviction for a crime on the [Offenses List](#), the certifying agency must deny the initial application or revoke the current certification. (See 10. below). Conviction of any other crime(s) necessitates an investigation to determine whether substantial relationship exists. (See 11. below.) Sometimes, the results of the DOJ criminal history record search will lead to enforcement actions that are not related to the Caregiver Law. (See 16. below.) A hit through the IBIS search may require the certifier to contact the appropriate regulatory agency to obtain details about the offense(s) that lead to the hit and; when applicable, to contact the DHS Office of Legal Counsel to obtain information about rehabilitation review results. (See 7.2.1. below.)

7.1. DOJ Search Results

Once the background check request is sent, the certifier will receive an order number on the next screen. When the order number is accessed, the search results are displayed. The results from DOJ are available for printing immediately unless the name entered is so common that manual DOJ intervention is required. In that case, the response is generally received within 24

hours. The DOJ matches the information submitted with the adult criminal database (and juvenile criminal database, when appropriate) and electronically returns the form to the requester with either a designation of, “No record found”, or with an attachment that provides information about hits found. Note: No record is received for a juvenile unless the juvenile has been adjudicated as delinquent.

7.1.1. Disposition Not Noted

If the DOJ criminal history record search results indicate the existence of a criminal charge on the [Offenses List](#) (see 10. below), but does not completely and clearly indicate the final disposition, the Caregiver Law requires the certifying agency to make “every reasonable effort” to contact the clerk of courts to determine the final disposition of the charge. County Clerks of Court are responsible for sending the final disposition information to the DOJ for arrests that occur in their county’s Circuit Court. If this information is not forwarded to the DOJ, the DOJ criminal record search response will state “no disposition received” or “end of record”. In this situation, the certified should search the Wisconsin Circuit Court Automation Program (CCAP) (see [9.4.](#) below) to find the docket and case numbers which can be used to obtain the record of the final disposition from the Clerk of Court. (See 9.4.1. below.)

7.1.2. Pending Criminal Charges

More often than not, when no disposition is noted it is because the case has not yet been settled. In this situation, the certifier should contact the District Attorney to obtain status and ongoing information until the final disposition is reached. A pending criminal charge cannot be the basis for substantial relationship or a bar under the Caregiver Law, even if it is for a crime that would bar the individual were s/he convicted of it. If the pending charge pertain to a provider applying for the certification for the first time, the certifying agency may deny based on other reasons listed in DCF 202.06. If the pending charge pertains to currently certified provider or to a non-client resident, the agency may suspend the certification pending the result of the charge. (See 16.2. below.)

7.1.3. BID Reveals a Charge/Conviction Not Listed on DOJ Results

If a person self attests on his/her BID form to a criminal charge/conviction on the [Offenses List](#) (see 10. below) , but it does not show up on the DOJ criminal history search results, the Caregiver Law requires the certifier to make “every reasonable effort” to contact the Clerk of Courts to obtain a copy of the criminal complaint and the final disposition of the complaint. A search of the Wisconsin Circuit Court Automation Program (CCAP) (see 9.4. below) may provide the docket and case number with which the certifier can obtain the record of the complaint and final disposition from the Clerk of Court. (See 9.4.1. below.)

7.1.4. Dismissed Charges

A DOJ 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, except that, in some counties, a conviction may be dismissed after the convicted person completes the First Offender Program. These charges will continue to show up on the DOJ search because charges

that have been reported to, and are on file at, the DOJ Crime Information Bureau cannot be expunged (except for “no prosecution”) from the DOJ database, even if they are expunged from the County Clerk’s office. The Caregiver Law applies only to actual convictions so charges with a disposition of not guilty or that are not prosecuted, or have been dropped, or dismissed cannot be used to bar a person from regulatory approval, employment or non-client residency or to establish substantial relationship. **Note:** A conviction dismissed through the First Offender Program may be the basis for a determination of substantial relationship. (See 11. below.)

7.1.5. “Non-Criminal” Charges

Occasionally the DOJ criminal record search response may indicate “non-criminal” after the charge or list ordinance numbers that do not correspond to statutory crime numbers. These designations relate to municipal or county ordinance violations that appear if the original arrest was reported to DOJ. Municipal and county ordinance violations are technically not “criminal” convictions and do not ever create a bar or substantial relationship under the Caregiver Law. A violation of this sort may, however, be the basis for enforcement action not related to the Caregiver Law (using DCF 202). (See 16.1. below.)

7.2. IBIS Search Results

The DOJ criminal history record search request (see 6. above) automatically initiates a search of other records through a data interface between DOJ, the DHFS and the Department of Regulation and Licensing (DRL). This interface is called the Integrated Background Information System or IBIS. Hits from this interface are reported to the requester in a separate document (from the DOJ response) known as the IBIS letter (on DHS letter head).

A denial/revocation on the IBIS letter means that someone committed an offense that created a bar to regulatory approval, non-client residency or employment. That bar may or may not have been lifted through rehabilitation review (RR) approval. The certifier must obtain additional information about any denial/revocation reported on the IBIS system. (See 7.2.1. below.)

The information included in the IBIS search is:

- Nurse Aide Directory Status: A name listed in this area of the IBIS response means that the person is included in the DHS Nurse Aide Directory of persons currently in compliance with the nurse aide testing and training standards. The date the person was added to the Directory will also appear.
- The Bureau of Quality Assurance (BQA) in the Division of Elder and Disability Services manages information regarding this directory.
- Non-credentialed Caregiver Findings of Abuse or Neglect of a Client or Misappropriation of a Client’s Property: Information is provided for findings both in Wisconsin and out-of-state. The Wisconsin Caregiver Misconduct Registry is a record of the names of nurse aides and other non-credentialed caregivers who have had a substantiated finding of caregiver misconduct (abuse or neglect of a client or misappropriation of a client’s property) made by the BQA for reasons specified in the Caregiver Law. The Registry identifies each caregiver by name, date of birth and type of caregiver. An individual with a finding of misconduct on the Wisconsin Misconduct Caregiver Registry may not be employed as a caregiver in any entity unless approved through the RR process. (See

12. below.) A rehabilitation review approval allows the caregiver to work in a state-regulated facility, however, 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.

- Denials or Revocations of Operating Licenses for Adult Programs (Chapter 50): These facilities include adult family homes, community-based residential facilities (CBRFs), nursing homes and so on. A name listed in this section means that the person has had a license to operate a facility regulated under Chapter 50 denied or revoked due to a bar specified in the Caregiver Law. The date of the denial or revocation will be provided as well as a phone number at which additional information can be obtained.
- Denials or Revocations of Operating Licenses for Children’s Programs (Chapter 48): These facilities include all of those licensed by BECR, as well as foster homes (adoptive homes) and child care providers licensed and certified by counties, tribal agencies or child placing agencies. A name listed in this section means that the person has had a license or certificate to operate a child care facility regulated under Chapter 48 denied or revoked due to a bar specified in the Caregiver Law.
 - The denial and revocation information for BECR-regulated facilities is drawn from CLIC.
 - The denial and revocation information for foster homes licensed by counties, tribal agencies or child placing agencies and child care programs certified by counties or tribal agencies, is drawn from the Children’s License Denial (CLD) database.
- Rehabilitation Review Findings: A name listed in this area means that the individual has completed a RR. Rehabilitation reviews performed by all entities that do them (see [12.1. below](#)) are included in this data search. The Office of Legal Counsel (OLC) in Madison collects and maintains the statewide RR data. The OLC phone number is provided so additional information may be obtained. If the person has been through a rehabilitation review, the date and outcome of the review will be provided. (See 12.2.3. below.) This may be:
 - Denial, which prevents licensure/regulatory approval, employment as a caregiver or non-client residency in a licensed or certified facility. or
 - Approval in full or part, with or without imposed restrictions.(See 12.2.3.1. below); or
 - Deferral of a decision until a future date, which continues to prevent employment as a caregiver or regulatory approval. (See 12.2.3.3. below).
- The status of Professional Credentials: This section will show whether the person currently holds a business or health professional credential, license or certificate, or has had it denied or revoked. The date the credential was received, denied or revoked will be provided along with a phone number for obtaining additional information. The Department of Regulation and Licensing manages this data.

7.2.1. A Hit on IBIS Search

Whenever a name generates a hit through the IBIS search, certifier should contact the applicable regulatory agency listed in the IBIS letter to obtain more information regarding the:

- Circumstances of the denial/revocation. For example, whether the licensee, a non-client resident or an employee committed the barred offense that lead to the denial/revocation.

- Rehabilitation review decision, if any. (See 12.2.3. below.) It is possible for the person to have RR approval that does not cover the program for which the person is currently seeking regulatory approval (See 12.2.3.1. below.) It is also possible that the person who is barred is not the person whose license was denied/revoked, i.e. was a non-client resident or employee. In that case, it is necessary for the certifier to determine whether the barred person is still a reason to prevent regulatory approval.
- Reasons for professional credential license or certificate denial/revocation or inclusion on the Wisconsin Caregiver Misconduct Registry.

8. Background Information from the County CPS unit

In addition to the Department of Justice (DOJ) criminal history record search and the Integrated Background Information System (IBIS) search (see 6. and 7. above), another statutorily required piece of a caregiver background check (CBC) is information about any substantiated findings of child abuse or neglect made by a county against an applicant, certified provider or non-client resident.

8.1. The Child Protective Services (CPS) check

As part of the certification application process, the certifier must contact the appropriate tribal/county Department of Social/Human Services to check child abuse and neglect files in the child protective services on the applicant, assistants, helpers, substitute and non-client residents. The process varies from county to county.

In some counties the CPS unit sends the certifier the child protective service investigation reports, some certifiers get information that a report exists or not. If a report is found, the certifier must contact the CPS for additional information. (See 8.2. below.)

8.2. Obtaining Licensing Records

If the applicant has been or currently is licensed by the DCF, the certifier should contact the licenser to find out if there is any concerning information in the licensing file that pertains to certification. The most relevant information for CBC purposes includes the reason for any past or pending license denial, revocations, suspensions and/or conditions. The certifier must evaluate information obtained from the agency and, when appropriate, obtain law enforcement arrest and prosecution records (see 9.4.1. and 9.5. below) and determine whether a bar to certification or non-client residency (see 10. below), or conditions that support a finding of substantial relationship, exists. (See 11. below).

8.2.1. CPS Records

When they exist, the certifier must obtain child protective service (CPS) investigation records from the agency. According to [s.48.981\(7\)\(a\)9.](#), Wis. Stats., tribes and county departments of social/human services are allowed to share information with child care regulatory staff. This language states that abuse and neglect reports and records may be disclosed to “a court or

administrative agency for use in proceeding relating to the licensing or regulation of a facility regulated under this chapter.” If a county/tribal CPS department refuses to share this information with the certifying agency, please refer them to the DHFS memo 2002-7, dated April 22, 2002. The memo titled, “Sharing of Abuse and Neglect Records with Licensing Agencies”, is available on the DCF website at: http://dcf.wisconsin.gov/memos/num_memos/2002/2002-07.htm

It is not necessary for the subject of the report to sign any written release for the information to be provided to certification staff. In practice, however, certain tribes/counties continue to refuse to release information/reports without a specific signed release. If this is the case, the certifier can ask the applicant to sign a release form provided by the tribe/agency or the general release form, <http://dhs.wisconsin.gov/forms/F8/F82009.doc>. Should the applicant refuse to sign the release, the application is handled as an incomplete application. It is worth noting that it is possible for a person not to realize that s/he is, or has been, involved in a child abuse or neglect (CAN) investigation by CPS or even that s/he has been identified in a substantiated finding as the maltreater. This is especially true when the investigation occurred prior to 1999 as, before that date, the agency making the finding did not provide due process to the person(s) against whom a finding was made and often didn't advise them of the substantiated finding. The person may, therefore, fail to indicate this in Section A of their [Background Information Disclosure](#) form (HFS-64) with no conscious intention of withholding the truth.

Whenever law enforcement have been involved in a situation that resulted in a CPS investigation, the certifier obtains the law enforcement arrest records (see 9.5. below) and, if the matter was referred for prosecution, the court records. (See 9.4.1. below.)

8.2.2. CPS Investigation in Progress

Under the Caregiver Law, a pending CPS investigation cannot be used to bar a person or to determine substantial relationship. An ongoing CPS investigation may, however, be the basis for enforcement actions not related to the Caregiver Law (DCF 202). (See 16.2. below.)

9. Additional Criminal Background Records

9.1. Out-of-State Records Checks

If the certifying agency receives an application that includes a [Background Information Disclosure](#) (BID) form that indicates that the person has lived, outside of Wisconsin, including for military service, within three years, the agency must run an out-of-state background check. If so, in addition to requesting the Department of Justice (DOJ) Criminal History Record Request, a good faith effort must be made to obtain conviction records from any state or other US jurisdiction (for example, tribal courts, Puerto Rico, US Virgin Islands, Guam) in which the person lived.

Contact information for states is listed on the DOJ Internet site that is available at: <http://www.doj.state.wi.us/dles/cib/sclist.asp>. This website provides information about the types of records available (adult, juvenile, convictions, arrests) and who can request the information (the subject of the inquiry, an employer or a government agency). Some states will not provide

information except to the subject of the search. These are the closed record states. (See 9.1.1. below) Most states require a signed release. Some states will accept Wisconsin's release form, others require their own form. The way the search is run (by name, only by fingerprints or by either) and the processing cost is also listed on the website. Note: The certifying agency may ask for the applicant/certified provider to pay for the costs associated with obtaining the out-of-state records.

After the out-of-state background information has been received, the certifier will determine whether the person has been convicted for a crime comparable to one that appears on the [Offenses List](#) (see 10. below) or whether substantial relatedness exists. (See 11. below.)

9.1.1. Closed Record States

The person who is the subject of the search is responsible for making a good faith attempt to obtain the necessary documentation from a closed record state, as the certifying agency cannot do this. Alternatively, rather than require the subject of the CBC to obtain the information, certifier may make the record request through the use of a fingerprint search. (See 9.2. below.) If the subject of the search is obtaining his/her criminal history from the closed record state(s), it is helpful to provide the DOJ website. If the person ultimately states that s/he has attempted but failed to obtain the search results, and the certifier concurs, obtain a written statement from the person indicating that s/he made a good faith effort to do so. There is no form or format for this statement. Place the statement in the provider's file.

If the person fails to make a good faith effort when asked to do so, or fails to provide the written statement when requested, the application is considered incomplete.

9.1.2. Open Record States

The certifier must make a good faith effort to obtain criminal history information from open record states. The request for payment and the signed release authorization associated with this request is made to the person who is the subject of the search. The certifier may use the Out-of-State Background Check Fee/Authorization Request (See [Appendix A](#)). A copy of the Confidential Information Release Authorization form (HFS-9) should be attached. Note: Some states require their own release authorization form. This can often be downloaded from the DOJ Internet site, available at: www.doj.state.wi.us/dles/cib/sclist.asp, but must be ordered by mail from some states. Note: Occasionally, the subject of the search must be required to provide fingerprint cards. Failure to provide the required fee, release form or fingerprint card, when requested, is treated as any other incomplete application.

The certifier completes the Out-of-State Criminal Background Search Request form, (unless the state has its own form/format). The request is sent along with the signed release authorization and the appropriate fee. If specifically requested in the instructions from the state, the certifier also encloses a self-addressed, postage-paid envelope. If the certifier is unsuccessful in obtaining the out-of-state criminal history, s/he should place a written statement in the provider's file detailing the good faith effort made and then proceed. In some situations a search of national criminal records through FBI files may be requested when other efforts to obtain out-of-state records have failed.

9.2. FBI Check

If warranted, the certifying agency is authorized to obtain fingerprints from the person whose background is being checked for the purpose of verifying the identity of the person and/or for obtaining criminal arrest(s) or conviction(s) records through Wisconsin's, or the FBI's nationwide, criminal history database. A FBI search will produce conviction information from closed record states and provides a more complete CBC. To request application materials and receive the fingerprint information, contact the Crime Information Bureau at the DOJ Internet site, <http://www.doj.state.wi.us/dles/cib/crimback.asp#Q6>. The certifying agency may ask the applicant to pay the fee associated with a fingerprint search. The FBI is required to make a reasonable effort to provide the national criminal history search results within 15 business days. When fingerprints are used to search Wisconsin's criminal history database, results are generally available within 10 business days.

9.3. Dishonorable Military Discharge

Section B of the BID requests persons who have performed military service (including the reserves) within the past three years to attach a copy of their discharge papers. (Veterans can obtain discharge information from the National Personnel Records Center through the Military Personnel Records website at: www.archives.gov/research_room/vetrecs.) If the discharge was dishonorable, the certifier should attempt to obtain additional information regarding the nature and circumstances of the discharge by asking the veteran for documentation. If the veteran fails to provide the requested information, the application may be considered incomplete.

9.4. Circuit Court Records (CCAP)

While not a mandated part of the CBC, the certifier may access criminal complaint and conviction information available through the Wisconsin Circuit Court Automation Program (CCAP) web site at: www.WCCA.wicourts.gov. (Note: A few counties, Walworth for example, do not participate in this system.) The Wisconsin circuit courts are the state's trial courts. They have original jurisdiction in all civil and criminal matters within the state. The circuit courts are divided into branches with at least one branch in every county, with the exception of six counties that are paired off and share judges. These are Buffalo/Pepin, Florence/Forest, and Shawano/Menominee. The CCAP is an easy to use system that allows access by entering the first and last name of the individual who is the subject of the search. A hit through this search provides the individual's date of birth, address, charge description, associated statute, severity (felony or misdemeanor), disposition, disposition date, case status and more. It covers divorce, small claims, traffic violations, family court disputes, etc. It is also possible for municipal or county ordinance violations to appear through this search. The volume of results can be significant and much, if not all, of it may not be useful. However, the CCAP search may be used to obtain more information regarding a DOJ hit, such as the case number. A search on CCAP that fails to find a criminal record does not mean that the person does not have a record. The CCAP search cannot be used in lieu of the DOJ criminal history record search.

9.4.1. Clerk of Courts/Tribal Jurisdiction Records

If a BID form, a CBC, or any other information shows a person was convicted of offenses that potentially substantially relate to child care, the certifying agency must make every reasonable effort to contact the clerk of courts to obtain a copy of the **criminal complaint and judgment of conviction** relating to that conviction.

County Clerks of Court/tribal jurisdictions are responsible for sending final disposition information to the DOJ for arrests that occur in their county's Circuit Court/tribal jurisdiction. If this information is not forwarded to the DOJ, the DOJ criminal record search response will state "no disposition received" or "end of record". (See 7.1.1. above.) In this situation, the certifier is able to obtain the docket and case number which can be used to obtain the record from the tribe/Clerk of Court and/or law enforcement. (See 9.5. below.)

Some Clerks of Court/tribal jurisdictions will simply turn over court records to the certification agency upon request; however, some require a written request before they will release their records. Note: In some counties, the Clerk of Court/tribe has its own form. The Clerk of Court may charge for information provided.

9.5. Law Enforcement Arrest Records

Very often law enforcement arrest records contain details that are important for the certifier to know, for example, whether children were present at the scene, the condition of the premises, who said what, the size and severity of wounds, etc. In some cases, an arrest record may be the only record available about an incident. When a certification is being denied/revoked on the basis of a substantiated finding of child abuse or neglect, any arrest records related to a situation are vital. When arrest records indicate that the case was referred for prosecution, certifier should also obtain any court records that exist. (See 9.4.1. above.)

Law enforcement records regarding adults fall under the open record law and the certifier should have no problem in obtaining them from the appropriate jurisdiction, usually at no charge. Juvenile arrest records are not subject to open record law, however, under s. [48.78\(2\)\(b\)](#), Wis. Stats., certification staff should be given access to these records as well. Note: In some counties, law enforcement may require a judge's signature authorizing release of a juvenile's record.

Police records can be requested by the name of the person and date of the incident or the certifier can request a jacket activity or police contact sheet and then choose which records to request.

10. Serious Crimes - The [Offenses List](#)

The Caregiver Law prohibits:

- Certifying agency from certifying or continuing to certify a person; or
- Certified provider from employing or contracting with persons who will have regular, direct contact with the clients (child care children) (see 2.2.3); or

- Persons who are not clients (non-client residents) from residing on the premises of a certified program (see 2.2.2.),

When the certifier or the provider knows, or should have known, that the person has been:

- Convicted of a serious crime listed in s. [48.685\(1\)\(c\)](#), Wis. Stats., (and comparable crimes and offenses from other states or other jurisdictions) or has been adjudicated delinquent for committing a serious crime; or
- Found to have abused or neglected a child through a determination made under s. [48.981\(3\)\(c\)4.](#), Wis. Stats. [A substantiated finding of child abuse or neglect (CAN)]; or
- Found to have abused or neglected any client or misappropriated the property of any client by a governmental agency defined in s.16.61(2)(d), Wis. Stats. (This is the nurse aide registry.); or
- Credentialed by the Department of Regulation and Licensing and the person's credential is not current or is limited so as to restrict the person from providing adequate care to a client. (This applies only to positions that require the credential, for example, a certified nurse assistant.)

Conviction for a serious crime(s) or a substantiated CAN finding, referred to collectively as the "[Offenses List](#)", (see 10.1. below) create a bar under the Caregiver Law. A bar, when it exists, prohibits a person from certification, employment or non-client residency in all program areas/entity types covered by the Caregiver Law. (See 2.1. above.) This bar continues indefinitely unless the barred person receives approval through the rehabilitation review (RR) process. (See 12. below.)

Most barred offenses are discovered through a CBC conducted as a result of an application for an initial certification. It is less likely for this to happen when a CBC is conducted in conjunction with re-certification. (See 4 above.) Typically, a revocation based on a Caregiver Law bar will follow a complaint investigation or information received from a tribe/county that is involved in a child protective services (CPS) investigation. When the certifier learns that an applicant, certified provider or non-client resident has committed an offense(s) that is on the [Offenses List](#), the certifier should determine whether:

- An appeal of the substantiated CAN finding is pending with the tribe/county. (See 10.5. below); or
- A RR is pending (see 10.6. below); or
- Rehabilitation review approval was obtained specifically for the crime or the substantiated CAN finding (see 10.7. below).

If none of these conditions applies, the certifier should immediately deny the application revoke certification. (See 10.2. below.)

10.1. The [Offenses List](#)

The [Offenses List](#) identifies, by statute number, the "serious crimes" listed in s. [48.685\(1\)\(c\)](#), Wis. Stats., and also other (non criminal) offenses that cause a bar. This includes a CAN finding made by a governmental agency under s. [48.981\(3\)\(c\)4](#), Wis. Stats. The [Offenses List](#) is found

in [DHS 12](#), Wis. Admin. Code, Appendix A, “Offenses Affecting Caregiver Eligibility”, part II., Entities and Programs Serving Any Clients Under the Age of 18.

Only those crimes/offenses on the Offenses List and comparable crimes and offenses from other states or other jurisdictions create a bar to employment, regulatory approval and non-client residency. **Under the Caregiver Law, the actual conviction, not the original charge or a pending charge, determines whether a person is barred.** However, the certifying agency, may consider the original charge, or a conviction dismissed through the First Offenders Program (see 7.1.4.), as well as any conviction for a crime not on the [Offenses List](#), (the so-called “non-serious crimes”) to be substantially related to the duties or the circumstances of the job. (See 11. below.) A finding of substantial relationship can cause a denial/revocation, but this finding is not subject to the RR process. (See [12.](#) below.)

10.2. Applicant with a Barred Offense

When an applicant/certified provider is barred and has not received the appropriate RR approval, the certifier must deny/revoke certification. The basis for the denial/revocation is [s.48.685\(4m\)](#), Wis. Stats.

The certifier must notify the provider in writing about the denial/revocation and must include the language applicable to DHS 12 related denials/revocations that provides information on rehabilitation review. The certifier should code the revocation as “Lic/Cert Revoked – DHS 12 - Bar w/ Rehab” or denial as “Denied – DHS 12 – Bar w/ Rehab “ in CCPC.

The certifier must complete a [DHS 12 Negative Action](#) notice form for each denial/revocation based on an offense that bars the provider from being certified. The form can be found at http://dcf.wisconsin.gov/forms/pdf/DCF_f_cfs2191.pdf . The form must be faxed to DCF Bureau of Early Childhood Education at 608-267-2200. BECE staff will enter these denials/revocations into the IBIS system.

10.3. Barred Person is a Resident

When an adult or minor non-client resident is barred and has not received appropriate RR (see 12.2.3.1. below), the certifier must deny/revoke the certification on the basis of DCF 202.06 (1)(c) The certifying agency determines there is danger to the health, safety or welfare of the children in care.

The certifier must notify the provider in writing about the denial/revocation and must include the language applicable to DHS 12 related denials/revocations that provides information on rehabilitation review. The certifier should code the revocation as “Lic/Cert Revoked – DHS 12 - Bar w/ Rehab” or denial as “Denied – DHS 12 – Bar w/ Rehab “ in CCPC.

The certifier must complete a [DHS 12 Negative Action](#) notice form for each denial/revocation due to an offense that bars the provider from being certified. The form can be found at http://dcf.wisconsin.gov/forms/pdf/DCF_f_cfs2191.pdf . The form must be faxed to DCF BECE at 608-267-2200.

Note: Even though the applicant /provider is not the person who is barred, the applicant's information is entered into the denial database because her/his certification was denied due to a resident having a barred offense. In this situation, the applicant/certified provider cannot receive RR because s/he is not eligible for a RR. (See 12. below.). If the resident with an offense moves from the home or is approved by a RR panel, the provider becomes eligible for consideration of regulatory approval.

10.3.1. When the Barred Non-client Resident Moves Out of the Facility

The certifier may impose a stipulation on the applicant rather than deny/revoke certification if the adult or minor non-client resident who is barred moves out of the home either on a temporary (for example, while seeking RR) or permanent basis. The stipulation most commonly requires the applicant to prevent the barred person from being present in the home when children are in care or are present.

10.4. Child Abuse or Neglect (CAN) Substantiated, Maltreater is Not Named

Sometimes a CPS investigation involving an applicant/certified provider, employee or non-client resident will result in a substantiated CAN finding, but the maltreater is not named. Some agencies have a policy of not naming juvenile maltreaters. A substantiated CAN finding without a named maltreater cannot be used to determine substantial relationship or a bar under the Caregiver Law, even when there is a strong likelihood that the maltreater is the applicant/certified provider, a household member, employee or a child in care. However, it is possible for the certifier to take enforcement action in this situation that is not related to the Caregiver Law by using reasons in DCF 202. (See 16.3. below.)

10.5. Substantiated Child Abuse or Neglect (CAN) Finding is Being Appealed

The provisions of the Caregiver Law mandate certification denial/revocation when a barred offense exists until that bar has been lifted through RR approval. This applies to a bar resulting from a substantiated CAN finding, even though the person who is the subject of a substantiated finding is appealing that finding. The provider is barred until the outcome of the substantiated CAN finding has been reversed. If the finding is reversed to be unsubstantiated, the provider may submit a new application for certification.

10.5.1. Initial Applications

If the certifier learns that an applicant for initial certification or a non-client resident, who has been identified as the maltreater in a substantiated CAN finding, is appealing the substantiation through the tribe/county/BMCW, the certifier may do one of three things:

- Hold the application pending the outcome of the appeal; or
- Recommend to the applicant that s/he withdraw his/her application pending the outcome of the appeal; or

- Immediately deny the application. (See 10.2 or 10.3. above.)

10.5.2. Currently Certified Providers

If a certified provider or non-client resident of the home is identified as the maltreater in a substantiated CAN finding and is appealing that finding, the certifier must nevertheless immediately proceed with suspension and/or revocation. (See 10.2. or 10.3. above.)

10.6. When a Rehabilitation Review (RR) is Pending

10.6.1. Initial Applications

If an applicant/non-client resident for an initial certification is barred but has applied to for RR, the certifier may do one of three things:

- Hold the application pending the outcome of the RR; or
- Recommend to the applicant that s/he withdraw his/her application pending the outcome of the RR; or
- Immediately deny the application. (See 10.2. or 10.3. above.)

10.6.2. Currently Certified Providers

The provisions of the Caregiver Law mandate certification revocation when a barred offense exists until the bar has been lifted through RR approval. (See 12.2.3.1. below.) For certified providers, the certifier must proceed with revocation even if the person who is barred has applied for RR. (See 10.2. and 10.3. above.)

10.7. RR Approval Granted

The Integrated Background Information System search results (the IBIS letter) indicates whether a person with a history of being barred has obtained RR approval. The certifier should obtain the details about the approval from the DHS Office of Legal Counsel (see 7.2. above). The approval must be carefully reviewed to ensure that it applies to child care certification. (See 12.2.3.1. below.) Also, the certifier should verify that approval is for regulatory approval, not merely employment. If RR approval for the specific program is not verified, the certifier should take action to deny/revoke the certification as the bar continues to apply. (See 10.2. and 10.3. above.) The certifier should also ensure that there have not been any subsequent offense(s) that creates a bar or substantial relationship. (See 11.below.)

11. Determining Substantial Relationship

In accordance with s.[48.685](#)(5m.), Wis. Stats., the certifying agency may refuse regulatory approval or non-client residency to persons who have been convicted of an offense that is not a

- Disorderly conduct s.947.01, Stats.
- Harassment s.947.013, Stats.

In the case of an originally charged crime that was plea-bargained down to one of those listed above, the nature of the person's behavior as well as the circumstances of the arrest and conviction must be considered. On the other hand, if a person was originally charged with one of the above crimes but, through plea bargaining, the actual conviction is for a different crime not on this list, a determination of substantial relationship can still be made. There is, however, no requirement to do an investigation for substantial relationship when the conviction is not for one of the above listed crimes.

11.3. The Investigation to Determine Substantial Relatedness

11.3.1. Obtaining Records

The certifier collects the documents necessary to make the determination of substantial relationship. When a child protective service investigation is involved, these records must be obtained from the investigating agency (See 8.2.1. above.) and, if applicable, law enforcement arrest records. (See 9.5. above.) For criminal violations, the primary records will be those obtained from the Clerk of Courts (see 9.4.1. above) and law enforcement arrest records, although other records could also be obtained. (See 9. above.)

11.3.2. Factors to Consider When Making a Determination of Substantial Relatedness

Chapter [DHS 12.06](#), Wis. Admin.Code, provides a list of criteria that may be considered in determining whether the crime for which the person has been convicted substantially relates to certification, employment or non-client residency. The criteria relate to:

The job:

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

The offense:

- Whether intent was 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 related to vulnerable persons;
- Whether the crime involved violence or threat or harm; and
- Whether the crime was of a sexual nature.

The person:

- The number and type of offenses for which the person has been convicted;
- The length of time between the conviction(s) and the current 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 children served, including their parents or guardians; and
- The age of the person on the date of the conviction(s).

The certifier should keep caregiver background check (CBC) documentation related to the determination of substantial relationship.

11.4. Denial/Revocation Based on Substantial Relationship

The basis for the denial/revocation is s. 483685(5m) Wis. Stats. plus appropriate administrative rule cites. The certifier should code the denial/revocation as "DHS 12 – Subst Related" in CCPC. There is **no** need to send a "DHS 12 Negative Action Notice" to the DCF BECE.

11.5. When Rehabilitation Review Approval Has Been Granted

Rehabilitation review (RR) approval lifts the bar to regulatory approval, employment or non-client residency. A determination of substantial relationship cannot be used to again deny/revoke the individual for the same offense(s) considered when the RR approval was granted. However, if the person with RR has committed a non-serious crime, i.e., a crime not included in the RR, the certifier may consider that non-serious crime(s) for substantial relationship. If the provider/non-client resident with RR approval has failed to adhere to any conditions imposed in conjunction with the RR approval, the certifier cannot use this as a reason to determine substantial relationship, but rather should report this to the RR panel member(s) that approved the RR. The RR panel will determine whether the RR approval should be removed and the original bar re-imposed. (See 12.2.2.3.1.1. below.)

12. Rehabilitation Review (RR)

Any person who has committed an offense on the [Offenses List](#) (see 10. above), is barred from regulatory approval, employment as a caregiver, or non-client residency in a certified program until that person has received approval through the rehabilitation review (RR) process in accordance with s. [48.685\(5\)\(a\)](#), Wis. Stats., and [DHS 12.12](#), Wis. Adm. Code. Rehabilitation review approval allows the bar to be lifted when the person has demonstrated by "clear and convincing evidence" that s/he has been rehabilitated in accordance with the procedures established by the DHS. Note: The possibility of removing a bar through RR exists for all barred offenses for all programs serving persons under age 18, except the foster care program.

Rehabilitation review approval only applies to the offenses known and considered at the time the requestor seeks RR. If the requestor subsequently commits an additional offense(s), that offense(s) may create a new bar (see 10. above) or substantial relationship. (See 11. above)

12.1. Agencies that Perform RRs

Rehabilitation reviews (RRs) are performed by several entities. These include DHS, BECR-licensed child placing agencies (CPAs), tribes/counties and school boards. The RR requestor submits his/her application to the appropriate entity as follows:

- If the requestor is seeking employment, non-client residency, contracted services, or regulatory approval for, or in, a **certified** entity, the rehabilitation review is usually conducted by the county/tribe.
- If the requestor wants to be approved for employment, non-client residency, contracted services, or regulatory approval for, or in, **licensed** entity, the review must be conducted by DHS. The application is sent to:

Department of Health Services
Office of Legal Counsel
One West Wilson St., Rm 651
Madison, WI 53707-7850
Telephone: 608-266-8428

All entities that perform RRs submit the results of their reviews to the DHS where a centralized database is maintained. A search of this database is part of the Integrated Background Information System (IBIS). (See 7.2. above.) The search results will show for the subject of the search, the date and outcome of any RR conducted anywhere in the state and will provide a phone number where more information can be obtained.

12.2. The RR Process

12.2.1. Application for RR

Rehabilitation review requestors must complete the [Rehabilitation Review Application](#) form (EXS-263) which is available at <http://dhs.wisconsin.gov/caregiver/BkgdFormsINDEX.HTM>. The requestor must indicate on the RR application the program area(s) for which s/he is seeking RR approval.

While a person who is barred is barred from all programs covered under the Caregiver Law (see 2.1. above), the RR panel will only consider whether to lift the bar for regulatory approval, employment or non-client residency in the program(s) requested on the RR application. If, for example, a requestor indicates that s/he is seeking approval only to pursue certification as a family child care provider, and RR approval is granted, that person cannot become a licensed child care provider without seeking RR again, this time for child care licensure. To avoid this

problem, most requestors indicate that they are seeking approval for more programs than they likely are interested in pursuing.

When the RR application is signed and notarized, the requestor submits it with the required documentation to the agency that will perform the RR. The requestor must provide all requested documentation within 90 days of the date the application is submitted or the application will be denied. (See 12.2.3.2. below.) There is no time frame specified for how soon the RR panel must meet to consider the application after it is completed.

12.2.2. The RR Panel Deliberation

The RR panel members receive and review the application materials prior to a scheduled review meeting. The panel must, at a minimum, consist of two members. Usually, it is larger because representatives from each of the various programs for which the requestor is seeking approval are present. The requestor may be present, may participate by telephone or may choose not to participate in the RR meeting. The panel members gather additional information from the requestor in an informal question and answer format. [Sometimes the requestor is asked to provide additional documentation, which will delay the panel's decision. (See 12.2.3.3. below.)] The requestor is then excused and the panel considers whether sufficient clear and convincing evidence of rehabilitation exists for them to agree on RR approval. The panel's decision is made by majority vote. During its deliberation, the panel may consider the following factors, as applicable:

- Personal reference checks and comments from employers, persons and agencies familiar with the applicant;
- Statements from therapists, counselors, teachers 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 or 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 offense;
- Evidence of rehabilitation, such as public or community service, volunteer work, recognition by other public or private authorities for accomplishments, or attempts at restitution and demonstrated ability to develop positive social interactions;
- The amount of time between the offense and the request for RR;
- 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.;
- A victim's impact statement, if any;
- The requestor's expressions of remorse or accountability;
- 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 committing 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; and
- The requestor's veracity.

12.2.3. The RR Decision

Once the panel reaches a decision it is conveyed, in writing, to the requestor and, as applicable or requested, to the regulatory authority, facility or person where the requestor is seeking employment or non-client residency. The RR panel may decide to:

- Approve, in whole or with limitations, with or without conditions. (See 12.2.3.1. below); or,
- Deny. (See 12.2.3.2. below); or
- Defer the decision. (See 12.2.3.3. below.).

12.2.3.1. RR Approval

A bar, when it exists, bars a person from regulatory approval, employment or non-client residency in all program areas covered by the Caregiver Law. (See 2.1. and 10. above.) However, RR approval, if granted, applies only to the specific program(s) the RR panel indicates in its approval decision. This may, or may not, be all of the program areas the requestor was seeking RR approval for when s/he submitted the RR application. (See 12.2.1. above.) For example, a requestor may indicate that s/he wants approval in order to apply for a license to become a family child care provider, seek employment in a group child care facility and become a certified child care provider. The RR panel may limit its approval by allowing the bar to be lifted for potential employment in a group child care facility because the panel believes there will be adequate supervision in that setting, but the panel may not approve lifting the bar for family child care.

The RR panel may also establish conditions on its approval. For example, a condition may be that the requestor continues to attend an alcohol and drug treatment program, or obtains anger management counseling.

12.2.3.1.1. Condition of RR Approval is not Met

Should a person with conditional RR approval fail to meet any of the terms of that approval, the bar may reapply. If a certifier becomes aware that a provider/licensee is not meeting the conditions of his/her RR approval, the certifier should report this to the entity that granted the RR approval. If the RR approval is withdrawn and the bar is re-imposed, the bar will be the basis for a certification denial/revocation. (See 10. above.)

12.2.3.2. RR Denial

If the RR panel does not find sufficient clear and convincing evidence of rehabilitation, the panel's decision will be to deny. The panel will provide the reasons for the denial, in writing, and inform the requestor of his/her right to appeal the denial. (See 12.2.4. below.) The applicant may not reapply for RR for the same or a similar reason(s) for one year from the date of the denial, even when the denial was for failure to submit all of the application documentation. (See 12.2.1.above.)

12.2.3.3. RR Deferral

A decision may be deferred for up to six months in order for the applicant to complete required training and/or counseling, or for the RR panel to gather additional information or for other reasons. In the meanwhile, the applicant continues to be barred.

12.2.4. RR Appeal Rights

The Caregiver Law permits people who have sought RR but failed to demonstrate their rehabilitation through clear and convincing evidence to appeal the RR denial. The appeal must be made within 10 days of the decision. Rehabilitation review denials made by BECR-licensed child placing agencies and DHS RR panel (including BMCW) may be appealed to the secretary of the DHS or his/her designee. Decisions made by tribes, county agencies or school boards may be made to the tribal leader/director of the county agency or the superintendent of public instruction, or their designees. Persons who are adversely affected by a decision by the secretary of DFS, tribal leader or county agency director may subsequently appeal under Ch.227, Wis. Stats., to the Division of Hearings and Appeals; or, for the Department of Public Instruction, they may appeal under Ch. 68, Wis. Stats.

12.3. Regulatory approval following RR Approval

Any person who has received RR approval is placed back into the pool of people who are "eligible" to be certified, employed or to reside as a non-client resident in a certified program in the specific program area(s) indicated for approval by the RR panel. (See 12.2.3.1. above.) Rehabilitation review approval does not guarantee anything beyond the right to again be considered as any other person who is not barred. A person with RR approval may still have their certification denied/revoked (or not be hired as an employee). However, the particular offense(s) that caused the bar and was considered when the RR approval was granted, cannot be used as the basis for denial/revocation (or failure to hire); nor can it be the basis of a determination of substantial relationship. (See 11.5. above.) However, should a person with conditional RR approval fail to meet any of the terms of that approval, the bar may reapply and be the basis of a denial/revocation. (See 12.2.3.1.1. above.) Should the person with RR approval commit another offense that was not considered when RR approval was granted, the new offense must be evaluated to determine whether it creates a new bar (see 10. above) or is substantially related. (See 11. above.)

13. Enforcement Actions due to Provider's Failure to Comply with the Caregiver Law

The certifier must check to ensure that the provider has complied with provisions of the Caregiver Law. A provider's failure to comply with the Caregiver Law is handled like any other non-compliance issue. Enforcement action may range from issuance of a Noncompliance Statement and Correction Plan through revocation. When the certifier finds it necessary to issue a non-compliance statement related to the Caregiver Law, the certifier should cite the specific statute.

13.2. Verifying that the Provider Responded Appropriately to the CBC Results

13.2.1. Provider Allows a Barred Person to Reside in the Entity

It is a violation of the Caregiver Law for a provider to allow someone to reside in the certified home when the person has committed an offense on the Offenses List or comparable crimes and offenses from other states or U.S. jurisdictions (see 10. above), unless the person has received prior RR approval. (See 12. above.) Since certifying agencies conduct CBCs on non-client residents (see 2.2. above), the decision regarding whether or not a bar exists for a non-client resident generally falls to the certifier. It is, of course, possible for a person with a bar to move in as a non-client resident without the provider informing the certifier. Or, a non-client resident may commit an offense that creates a bar but that bar does not come to the attention of the certifier until the next routinely scheduled CBC. (See 4. above.)

Should a provider allow a barred person to reside as a non-client resident, the certifier should initiate revocation on the basis of DCF 202 and the appropriate administrative rule cites (including a cite for not revealing the presence of the non-client resident, if that is the case.)

The certifier should code the revocation as "Revocation – DHS 12 – Bar w/ Rehab" in CCPC. The certifier must also submit a "DHS 12 Negative Action Notice" to the DCF BECE. Note: Even though the provider is not the person who is barred, her/his information is entered into the Denial database and will become part of the IBIS record in the future.

13.2.2. Provider Allows a Barred Person Employment

NOTE: Per DCF 202, a certified provider must notify the certifying agency before s/he hires a substitute, employee, or allows a volunteer to work with children.

It is a violation of the Caregiver Law (and DCF202) for a provider to allow someone to work as a caregiver when the person has committed an offense on the Offenses List, or comparable crimes and offenses from other states or U.S. jurisdictions (see 10. above), unless the person has received prior RR approval. (See 12. above.) If the BID or criminal record check of a current employee indicates a barred crime or offense, the certifier must see a copy of the RR approval letter. Note: It is important to review the approved program area(s). (See 12.2.3.1. above.) If RR approval is not verified, the certifier should take action to revoke the certificate in accordance with DCF 202 and the appropriate caregiver statutes.

The certifier should code the revocation as “Revocation – DHS 12 – Bar w/ Rehab” in CCPC. Note: Even though the provider is not the person who is barred, his/her information is entered into the Denial database and will become part of the IBIS system. (See 12. above.)

13.2.2.1. Employee/Resident Failed to Reveal a Substantiated CAN Finding

The Caregiver Law prohibits provider from employing or allowing a person to reside in the certified program if the provider “knows, or should have known” that the person is barred. A provider has no way of knowing an employee or, in some cases, a non-client resident (for example, a husband/boyfriend with a finding that pre-dates the relationship) has a substantiated finding of child abuse or neglect (CAN) unless the person discloses it. If a barred employee or non-client resident does not reveal on his/her BID that s/he has a substantiated finding of CAN and this becomes known to the certifier, the certifier should not initiate enforcement action against the provider unless the provider does not immediately terminate the employee or remove the non-client resident.

13.2.3. Provider Allows Residency to a Person with a Substantially Related Crime

Should a provider allow a person to reside as a non-client resident after the certifier has made this determination, the certifier should initiate revocation on the basis of s. [48.685](#)(4m)(b), Wis. Stats., and the appropriate administrative rule cites. The certifier should code the denial/revocation as ‘DHS 12- substantially related’ into CCPC. No DHS 12 Negative Action Notice is necessary to be sent to DCF BECE.

It is possible for a person who has committed a non-serious crime (see 11.1. above) to move in as a non-client resident without the provider informing the certifier, or, a non-client resident may commit a non-serious crime that does not come to the attention of the certifier until the next routinely scheduled CBC. (See 4. above.) In these cases, the certifier must consider substantial relationship when the crime becomes known. If substantial relationship does exist, the certifier then revokes the certificate including a cite for not revealing the presence of the non-client resident, if that is the case.

13.2.4. Determining Substantial Relationship for Employees

A non-serious crime is any crime not on the [Offenses List](#). (See 10.1. above.) If an employee or prospective employee has a conviction(s) for certain non-serious crimes, the certifier must investigate the circumstances of the crime to determine if it is substantially related to the duties of the job. (See 11. above.) However, when the conviction(s) is for any other non-serious crime, it is up to the certifier to determine if the offense should be investigated for substantial relationship or not; what constitutes an investigation; and whether or not the crime is substantially related. Further, if the certifier does make a determination of substantial relationship, the certifier should discuss the matter with the provider who may then decide whether or not to use that determination as a reason not to hire a candidate or to dismiss an employee.

A form exists to assist the certifier in determining substantial relationship. Use of the form is completely voluntary. [The form, Caregiver Background Check Substantially Related Investigation Report \(CFS – 2261\)](#), is available on the DCF BECR Internet site.

Should the certifier believe that the provider is endangering the health, safety and welfare of children in care by not making a determining of substantial relationship when the certifier believes it does exist, the certifier may revoke certifier based on substantially related criteria (See 13.2.4.3. below.). The certifier may also quote DCF 202 – certification rules.

13.2.4.2. Employee/ Resident Has Pending Charges

This applies mostly to school age certified programs: A provider may consider pending criminal charges or a pending child abuse and neglect investigation, [or a city/county ordinance violation(s)] when making an initial hiring decision. (Note: This is not a decision based on the Caregiver Law.) However, it is not permissible under the Fair Employment Law to terminate an existing employee because of a pending charge. An existing employee who is charged with a crime that is substantially related to the duties of the job may be suspended or removed from a caregiving position until the disposition of the charge. This decision is the provider's. If the employee is eventually convicted of a non-serious crime that is substantially related, the provider may choose to dismiss the employee at that time. Again, dismissal is at the provider's discretion. If the pending charge results in a conviction for a serious crime or offense (a barred crime), the provider must dismiss the employee at that time. (See 13.2.2. above.)

13.2.4.3. Certifier Disagrees with the Provider Regarding Substantial Relationship

Should the certifier believe that the non-serious crime(s) committed by an employee is substantially related to the care of children despite the provider's failure to make that determination, the certifier should take action to sanction the provider. The certifier may inform the provider of the reasons for believing substantial relationship exists and indicate that s/he is creating a situation that endangers the welfare of children by allowing the person who committed the crime to work in the program. Should the provider not remove the person from the program, the certifier should initiate revocation of the certificate on the basis of [s.48.685\(4m\)\(b\)](#), Wis. Stats., and the appropriate administrative rule cites.

The certifier should code the revocation as "DHS 12 – substantially related" in CCPC.

14. Confidentiality Issues Related to CBCs

When the caregiver background check (CBC) results in discovery of a record that affects or may affect regulatory approval, the confidentiality of the record becomes an issue.

14.1. CBC Results - Adult Records

Information regarding criminal convictions received from Department of Justice (DOJ) in response to the criminal history record request (DJ-LE-250 or 250A) is public record and can be

shared with anyone. All information received in the IBIS letter (see 7.2. above) is also public record and may be shared.

14.2. CBC Results - Juvenile Records

All records related to a juvenile are confidential and should not be shared.

14.3. Second Source Documents

Although technically anything contained in a provider file is subject to the open record law, as a general rule, certification staff should not share second source documents obtained during a CBC and/or related investigation. Requestors should be referred to the original source to obtain the desired information, except that law enforcement and/or child protective service (CPS) investigation reports may be shared with other governmental agency staff; and, information equivalent to the DOJ response obtained from another state can be shared with anyone. (Note: law enforcement investigation reports obtained from another state(s) should be handled the same as if they were obtained from Wisconsin law enforcement agencies.)

Law enforcement and/or CPS investigations or other records may be quoted in enforcement actions, however, any reference to minors must be redacted. Should a certifier deny or revoke certification based on a CPS finding that involves a non-client resident, and the provider/applicant is unaware of the finding, the certifier should not disclose the CPS information to anyone other than the non-client resident. Instead, inform the applicant/certified provider that a background record search has revealed that the non-client resident has a history that requires him/her to receive rehabilitation review approval (see 12. above) before he/she can be a non-client resident in a certified program. If requested, the certifier should tell the applicant/certified provider where to obtain information about the CPS finding.

15. Record Keeping

The certifier should file all copies of the Department of Justice (or other state) Criminal Record History and IBIS search results in the provider file. If a child protective service (CPS) child abuse and neglect (CAN) investigation is part of the documentation, this should be marked confidential, along with any associated law enforcement reports or other related documents.

16. Enforcement Actions Not Related to the Caregiver Law

16.1. Municipal/County Ordinance Violations

Municipal and county ordinance violations are technically not “criminal” convictions and none is included on the [Offenses List](#) (see 10. above) that creates a bar to employment, regulatory approval or non-client residency. These violations likewise cannot be used to establish substantial relationship under the Caregiver Law. The certifier usually does not investigate this type of violation involving an applicant/certified provider or non-client resident. However, the

certifier should obtain the records from the appropriate city or county law enforcement agency (see 9.5. above) and Clerk of Court (see 9.4.1. above) when the violation suggests the person's behavior may pose a danger to children in care; for example disorderly conduct, harassment, domestic disturbance, etc. It is unlikely that a municipal/county ordinance violation would be the sole basis of a denial/revocation, but it may contribute to a pattern of behavior that leads to a denial.

16.2. Pending Criminal Charge/Child Protective Service Investigation

While a pending criminal charge, even for a serious crime or an ongoing child protective service (CPS) investigation cannot be used to bar an individual, it can be the basis of a denial, suspension or revocation. If the person is eventually convicted of a serious crime, or is the subject of a substantiated finding of child abuse or neglect (CAN), s/he then is barred until s/he receives rehabilitation review approval. (See 12. above.)

16.2.1. Initial Applications

The certifier should review the circumstances of the pending criminal charge or CPS investigation. The certifier has the following options:

- Hold the application pending the outcome. If:
 - The outcome creates a bar, deny the application based on [DHS 12](#). (See 10.2. above.)
 - The outcome is used as the basis of a finding of substantial relationship, deny the application on that basis which is not HDS 12- substantially related. (See 11.4 above.); or
- Advise the applicant to withdraw the application pending the outcome; or
- Deny the application on the basis of DCF 202. The language applicable to DHS 12-related denials should not be included. The certifier should code the denial as "Denial – DCF 202" in CCPC.

16.2.2. Currently Certified Providers

While the Caregiver Law does not take into consideration pending charges when imposing a bar to regulatory approval, employment, or non-client residency, the certifier must, on the basis of DCF 202, initiate a suspension when imminent danger to the health, safety or welfare of children in care exists; or initiate revocation (or a stipulation on the certificate, see 16.2.2.1. below) because:

- The provider or non-client resident has a pending criminal charge that substantially relates to the care of children or activities of the program; or
- The provider or non-client resident is identified as being the subject, or one of several subjects, of a current investigation for alleged CAN pursuant to [s.48.981](#), Wis. Stats.

16.2.2.1. Stipulation in Lieu of Suspension/Revocation

In some cases the certifier may impose a stipulation on the certificate rather than deny/revoke the certification. The stipulation may require the provider to prevent the person under investigation from being on the premises during hours when children in care are present.

16.3. Denial/Revocation when the Maltreater is Not Named

Sometimes a CPS investigation involving an applicant/certified provider, employee or non-client resident will have a substantiated child abuse or neglect (CAN) finding, but the maltreater is not named. For example, some agencies have a policy of not naming juvenile maltreaters. A substantiated CAN finding without a named maltreater is a difficult situation especially when there is likelihood that the maltreater is the applicant/certified provider, a household member, employee or a child in care. In some cases the certifier may impose a stipulation on the applicant/certified provider rather than deny/revoke the certificate. The stipulation may require the applicant/certified provider, for example, to prevent the likely maltreater from being on the premises during hours when children in care are present. In other cases, the certifier may deny (see 16.3.1. below) or revoke the license. (See 16.3.2. below.). The county/tribe does not have to send a DHS Negative Action notice on these denials/revocations.

16.3.1. Initial Applications

The certifier may deny the application on the basis of DCF 202. The certifier should code the denial as "Denial – DCF 202" in CCPC.

16.3.2. Currently Certified Providers

The certifier may revoke the certification on the basis of DCF 202 Admin Rule. The certifier should code the revocation as "Revocation – DCF 202" in CCPC.

Appendix A:

Out-of-state Background Check Authorization Request

DATE

NAME
ADDRESS
CITY, STATE ZIP

RE: OUT-OF-STATE CAREGIVER BACKGROUND CHECK
FEE/AUTHORIZATION REQUEST

Dear NAME:

As part of an application for a license, Provider's name recently submitted a Caregiver Background Information Disclosure form (F-82064A) to our agency on which you indicated that you resided outside of Wisconsin within the last three years. Wisconsin's Caregiver Law requires that we must therefore conduct a background check of you through the State of STATE NAME. You are responsible for the cost of this background check.

Please sign the enclosed Confidential Information Release Authorization form that will permit release of this information to us. Return the signed authorization form to us in the enclosed self-addressed envelope along with a cashier's check or money order for \$AMOUNT, made payable to PER STATE INSTRUCTION. This is the fee that the State of STATE NAME charges to conduct this background check.

Note: We cannot accept a personal check or cash. Do not send the authorization form and fee directly to the State of NAME.

If you have any questions, please contact CERTIFIER NAME at CERTIFIER PHONE #.

Sincerely,

NAME, Child care Certifier

Enclosures

Rehabilitation Review Flow Chart

