

CAREGIVER BACKGROUND CHECKS REQUIREMENTS FOR CHILD CARE CENTERS

On October 1, 1998, a law was enacted that implemented a new process for background checks in child care centers. Administrative rule DHS 12 (numbered HFS 12 prior to December 1, 2008) was created to implement the provisions of the law. The Department of Children and Families (DCF) maintains a website at <http://dcf.wisconsin.gov/childcare/licensed/CBC.HTM> that contains copies of caregiver background check (CBC) related forms and information, a copy of DHS 12 and answers to some frequently asked questions. The website is updated frequently and we encourage you to become familiar with it. If you do not have Internet access, most public libraries have computers with Internet access.

List of acronyms used

BECR Bureau of Early Care Regulation
BID Background Information Disclosure (form F-82064)
CBC Caregiver Background Check
DCF Department of Children and Families
DHS Department of Health Services
DOJ Department of Justice
DRL Department of Regulation and Licensing

OVERVIEW OF THE CAREGIVER LAW

The Caregiver Law identifies certain crimes, acts or offenses that bar individuals from holding a child care license or from being employed by or residing at a child care center. These crimes, acts or offenses are listed in DHS 12, Appendix A, under the heading Offenses Affecting Caregiver Eligibility. A person with a conviction or finding for one of the crimes, acts or offenses listed remains permanently barred from licensure, employment or residency in a child care center unless that person requests rehabilitation review from the Department of Health Services (DHS) and receives approval. The rehabilitation review process allows a barred individual the opportunity to demonstrate that s/he is rehabilitated and not likely to repeat the conduct that led to the criminal conviction or finding.

In accordance with the Caregiver Law, convictions for other crimes that are not listed in Appendix A can be considered for "substantial relationship." The Caregiver Law permits the Department of Children and Families (DCF) to refuse licensure or non-client residency to persons who have a conviction determined to be substantially related to the care and safety of children. Child care providers can refuse employment on the same basis. Once determined, substantial relationship has a similar effect as a bar, but substantial relationship is not subject to the rehabilitation review process. Also, unlike a bar, a finding of substantial relationship applies only to the particular license, job or residency for which it was considered and determined.

The screening tool that begins the CBC is the Background Information Disclosure (BID) form. The person who is the subject of the CBC completes and signs the BID.

The Department of Children and Families, delegated to the Bureau of Early Care and Regulation (BECR), requires BIDs from licensees and non-client residents age 10 and older at the time of initial application and every 2 years thereafter. BECR conducts CBCs on licensees and adult non-client residents at initial application and every four years thereafter even when the BID is clean. BECR conducts CBCs on minor non-client residents only when warranted by answers on the BID.

Child care licensees are responsible for obtaining BIDs from their employees and individuals under contract every 4 years and for conducting a CBC on each. (BECR conducts the CBC when the employee or other caregiver is under age 18.) In addition, licensees may require a BID and conduct a CBC whenever it is appropriate. For example, should the licensee learn that an employee has been arrested, s/he should require a BID and conduct a CBC on that employee regardless of when the last CBC was conducted.

To complete the CBC, the licensee fills out the Criminal History Record Request form. The requester submits this form, along with the required fee, to the Department of Justice (DOJ) where it is matched against the Wisconsin adult and juvenile criminal history database. The licensee can also conduct the Criminal History Record Request with the DOJ on-line once the licensee has established an account. (See question 6.)

In addition to the DOJ match, as part of the CBC some Department of Health Services (DHS) and Department of Regulation and Licensing (DRL) records are also matched. These records pertain to professional licenses, child care licenses / credentials and regulatory actions related to them. The requester receives the results from these matches separately from the DOJ match results.

FREQUENTLY ASKED QUESTIONS

1. How does the Caregiver Law affect child care centers? The BECR will conduct a CBC on all licensees and adults residing in the home. The BECR will also review BID forms for children ages 10 through 17 years who reside in the child care center but will conduct a full CBC only if warranted by information on the child's BID form.

The child care licensee is responsible for conducting CBCs on adult employees and individuals who the center has under contract. Adult volunteers who are used to meet staff-to-child ratio and student teachers must also have a CBC conducted by the child care center or another designated agency such as a technical college, university or employment agency (see questions 13. and 16.). BECR conducts CBCs on any employee or other helper in the child care center who is less than 18 years of age (see questions 5. and 14.).

2. I am getting ready to apply for a child care license. What must I send to the BECR regional office to begin the CBC process necessary to obtain a license? You must complete a BID form for yourself. In addition, you will need to give a BID form to any persons residing in your child care center who are 10 and older and ask them to complete it. Completed BID forms must be submitted along with application materials to the BECR regional office. Except for children aged 10 through 17 years, you must submit a processing fee for each completed BID form along with the applicable licensing fee. If the BECR determines that the CBC must be processed for a child based on the information provided on the child's BID form, BECR will request the additional fee from you. For information about fees, see the Department's publication DCF-P-PFS4075A Background Check Information Schedule – Family Child Care Centers or DCF-P-PFS4075B Background Check Information Schedule – Day Camp & Group Child Care.

3. Why does my child who is age 10 or older need to complete a BID form? Part of the Caregiver Law included a provision for checking the juvenile records for every person aged 10 and over who works for, assists or resides in a child care center.

4. May I complete and sign the BID form for my child? Parents may complete and sign the BID for their child. Children may also complete and sign the form themselves.

5. How do I obtain a CBC on an employee, helper or substitute and how often must I do it? You must complete a CBC on each of your employees, substitute caregivers, or contracted persons providing services to the children in your care every 4 years. There are 3 steps you take to complete a CBC:

- Give each employee, contracted person, or substitute caregiver a BID and ask them to complete it. Be sure to keep the most recent BID on file for future review by your licensing specialist. See question 9. on how to use the form as a screening tool.
 - You have 60 days after your license has been issued to complete CBCs for new hires (see question 10.).
- Complete a Multiple or Single Records Request form, (DJ-LE-250 or 250A) and submit it to the DOJ (see question 6.) along with the necessary fees (see question 7.). Note: BECR completes the CBC for minor employees or other minor caregivers.
 - When completing the DJ-LE-250 or 250A, check the box, Child Care – Caregiver, and enter your facility number in the space provided (see question 8.).
- After you receive the reports returned to you from the DOJ and the DHS/DRL, you must evaluate the results and take appropriate action (see questions 11., 12. and 13.). Keep the background information on file.

6. Where do I get the Multiple or Single Record Request forms? The request forms can be obtained from the web site <http://dcf.wisconsin.gov/childcare/licensed/CBC.HTM>. Print a copy of the form, include the processing fee for each name listed and include a self-addressed, stamped envelope. Requests can also be made online once you have an account. For instructions, see the DOJ website: <http://wi-recordcheck.org/>.

7. What are the required fees for CBCs I need to run through DOJ? The fee for each record requested is \$3.00 plus:

- For CBCs done by mail or fax:
 - Non-profit organization \$12.00
 - Government agency \$12.00
 - Any other requester \$18.00
- For CBCs done online:
 - Non-profit organization \$7.00
 - Government agency \$7.00
 - Any other requester \$13.00

8. What is a facility number and where can I find the one for my center? The facility number is a 6- or 7-digit number assigned by the BECR to each licensed child care center. You will not be issued a facility number until you have received your license. This number will appear on the license certificate and any future mailing you receive from the BECR. It is also available from your licensing specialist. You have 60 days after your license has been issued to obtain the complete CBC on any employees. Your facility number must be used when submitting a CBC request to the DOJ on the Multiple or Single Record Request forms.

9. How do I use the BID as a screening tool? You will notice that the BID has 2 sections—Section A and Section B. Please use the following guidelines when screening a completed BID.

- If the form contains only **No** answers to all questions in Section A, that person may work in your child care center under supervision until a complete CBC is received and evaluated. The complete CBC must be obtained within 60 days after a person begins to work for you.
- A **Yes** answer to any question on Section A of the BID may indicate that the person is barred from licensure, non-client residence or employment in the child care center unless rehabilitation review approval is obtained from the DHS.
- A **Yes** answer to a question in Section B of the BID is for your information and may indicate that additional information must be obtained.

10. How quickly after I hire or contract with a person must I complete the CBC? You may allow a person whose BID has only **No** answers in sections A and B to begin employment immediately, with supervision. You have 60 days after you hire a new employee to complete the CBC on that individual. That includes obtaining the results from the DOJ and the Department of Health Services (DHS) and Department of Regulation and Licensing (DRL) and completing any follow-up investigation of the results. It is imperative that the request for a CBC be submitted to the DOJ in a timely fashion. We recommend that the request be submitted within 48 hours after hiring so you will be sure to have sufficient time to receive the reports back and conduct any necessary investigation within the 60-day time frame. If a person answers **Yes** on sections A or B of the BID, you may not allow that person to begin employment until you have completed the CBC and evaluated the results.

11. What do I do with the match results I receive from the DOJ? If the results show that the subject of the CBC has a criminal conviction or other offense, you must check the crime or offense against the list of barred crimes, acts and offenses in Appendix A of DHS 12, Offenses Affecting Caregiver Eligibility. **If the person is barred, you cannot hire the person, or continue employment of a current employee, until you have evidence of the person's rehabilitation approval from the department** (see question 17). If the reports show that the individual has a conviction for a crime that is not a barred crime, you may need to conduct an investigation to determine whether the crime is substantially related to the job the person is, or would, perform. If the person has been convicted of certain crimes within 5 years before the information was obtained, you must, by law, make every reasonable effort to investigate the circumstances for substantial relationship (see question 12). These specific crimes are listed in the introduction to Appendix A, Offenses Affecting Caregiver Eligibility, of DHS 12. You can find a copy of DHS 12 on the DCF web site <http://dcf.wisconsin.gov/childcare/licensed/CBC.HTM>.

12. How do I conduct an investigation for substantial relationship and make a decision? Seek additional information from the Clerk of Court where the crime was prosecuted or from the agency which took the action against the individual. Once you have gathered all the relevant information, use it to determine whether the crime committed substantially relates to the person's ability to care for children or to perform the job for which they have applied or been hired. The form *Caregiver Background Checks Substantially Related Investigation Report* has been developed to help you make this decision and is available on the DCF website <http://dcf.wisconsin.gov/childcare/licensed/Forms.htm>. You may also review DCF 12.11(3) or contact your licensing specialist if you have questions about the investigation or decision making process. It is up to you to decide whether or not to use a determination of substantial relationship as a reason not to hire a candidate or to dismiss an employee. It is good practice to document the steps of your investigation and your decision.

13. What do I do with the match results I receive from Department of Health Services and Department of Regulation and Licensing? The matches against DHS and DRL records provides information such as:

- A finding of abuse, neglect or misappropriation of client property against the subject of the CBC. This information is contained in the Adult Caregiver Reporting System and generally pertains to people working as a certified nurse's aide (CNA) and nurses.
- Information about the status of professional licenses / credentials the subject of the CBC has or had through the DRL. Examples of such licenses / credentials are CNA, nurse, and social worker.
- Information about regulatory actions including license / credential records, revocations, and employment, contract or permission to reside as a non-client resident prohibitions related to the Caregiver Law made by the DHS, a county or a licensed child placing agency.
- Information about any rehabilitation reviews involving the subject conducted by the DHS or other agencies.

If the subject of the CBC has any of the above records reported on the DHS match response, you must call the telephone number provided to gather more information from the agency involved. If you learn that the subject of the CBC has committed an offense listed in Appendix A of DHS 12, Offenses Affecting Caregiver Eligibility, that person is barred. **You cannot hire the person, or continue employment of a current employee, until you have evidence of the person's rehabilitation approval from the department.** See question 17.

14. Occasionally the high school in my community will ask whether students, as part of a class, may come to observe in my child care center, or I may accept a student teacher from a local technical college or university. Do these students need to have a background check? Students who observe or participate in a program as the result of a class need to have a completed BID on file at the center. The BID must be evaluated as described in Question 9. above. A complete CBC is required if the placement will last for longer than 60 days.

15. What if I share an employee with another child care facility? If more than one center contracts with or employs an individual who must have a CBC, either center may share the CBC results with the other center. We recommend that each center obtain a completed BID from the individual.

16. Who is responsible for completing the background check on an employee hired from a temporary employment agency? Either the center or the temporary employment agency may conduct the CBC. Because only licensed child care centers have a valid facility number, which is needed to obtain the juvenile portion of the record check, the temporary employment agency may have an agreement with a licensed child care center to request the CBC through the center. The center may share the results of the CBC with the temporary employment agency which in turn would do any investigation and make the determination as to whether the employee may work in a licensed child care facility. A letter should be sent to each center where the temporary employee works indicating the results of the CBC.

17. What is a rehabilitation review and how does a person request one? Persons who have committed certain crimes, acts, or offenses are barred from licensure, non-client residency, employment or contracting with a licensed program unless the bar is lifted through a rehabilitation review. Section DHS 12.12 explains who is eligible for a rehabilitation review and how to request one. If a person wishes to request a rehabilitative review, s/he must follow the directions on the Rehabilitation Review Application, which is available from the regional office or the DHS website <http://dhs.wisconsin.gov/caregiver/BkgdFormsINDEX.HTM>. The person requesting the rehabilitation review will need to complete the application form and forward it with all accompanying materials to: Office of Legal Counsel, Department of Health Services, P.O. Box 7850, 1 West Wilson St., Rm. 651, Madison, WI 53701-7850.

Rehabilitation approval does not ensure that approved person will receive a license, employment, contracts or permission to reside at a center. It lifts the bar so that the individual may be considered like any other person. If a non-client resident in the child care center age 10 or older has a crime, act or offense that requires a rehabilitation review, one must be completed before a license can be issued.

Resources:

- Background Information Disclosure and instructions <http://dhs.wisconsin.gov/caregiver/BkgdFormsINDEX.HTM>
- List of Wisconsin clerks of court <http://dhs.wisconsin.gov/caregiver/contacts/index.htm>
- Caregiver Background Checks Substantially Related Investigation Report <http://dwd.wisconsin.gov/dcf/forms/viewsort/default.asp?ID=NEW>
- Wisconsin Criminal History Customer Account Application, Wisconsin Criminal History Record Request and instructions, and list of out-of-state criminal record checks offices <http://www.doj.state.wi.us/dles/cib/crimback.asp>

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