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# Budget Briefs

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## CAREGIVER BACKGROUND CHECKS

The biennial state budget act (1999 Wisconsin Act 9), passed by the legislature and signed by Governor Tommy Thompson on October 27, 1999, revises requirements for background checks of employees and others involved in providing care for children or adults.

### ENTITIES AND INDIVIDUALS COVERED

Prior to 1997, certain child care providers were required to conduct background checks on their employees. 1997 Act 27 and 1999 Act 9 have expanded the background check requirement to all state-regulated facilities, organizations, or services that provide care or treatment for adults, plus day care or foster care providers and other providers of care for children. "Entities" covered under the background check law include nursing homes, hospitals, hospices, home health agencies, group homes, state institutions, assisted living facilities, mental health programs, family and group day care centers, and various other patient and child care providers.

Act 9 narrows the scope of the background checks from any individuals with access to clients to only those who have "regular, direct contact with clients". Direct contact is defined as face-to-face physical proximity to a client that affords the opportunity to commit abuse or neglect of a client or to misappropriate the property of the client. Act 9 removes emergency medical technicians from the required background check provisions. According to the Department of Health and Family Services (DHFS), the law affects about 10,000 employers, and, in 1999, about 30,000 checks were conducted each month.

### PERSONS BARRED

A person who has been convicted of any of the following crimes or who is the subject of any of the following findings is barred from operating, being employed at, contracting with or residing at an entity unless the person can demonstrate rehabilitation:

- 1st or 2nd degree intentional homicide;
- 1st degree reckless homicide; felony murder; assisting suicide; felony battery;
- sexual exploitation by a therapist;
- 1st, 2nd, or 3rd degree sexual assault;
- abuse of vulnerable adults; abuse of residents of a penal facility;
- abuse or neglect of patients and residents;
- 1st degree sexual assault of a child;
- repeated acts of sexual assault of the same child;
- physical abuse of a child with intent to cause great bodily harm;
- a substantiated report of abuse or neglect of a client or of misappropriation of a client's property based on information maintained by DHFS;
- a county agency determination that the person has abused or neglected a child; or
- a finding that the person's credentials are not current or are limited so as to restrict the person from providing adequate care.

In addition, a conviction of any of the following crimes bars a person from operating, being employed at, contracting with or residing at an entity that serves children unless the person can demonstrate rehabilitation:

- sexual exploitation, neglect, or 2nd degree sexual assault of a child;
- physical abuse of a child with intent to cause bodily harm;
- possession of child pornography, causing a child to view or listen to sexual activity or exposing a child to harmful material, descriptions, or narrations;
- a child sex offender working with children;
- incest with a child;
- child enticement, soliciting a child for prostitution; or
- abduction of another's child.

Act 9 requires the University of Wisconsin to report on the correlation between prior convictions and the propensity to commit future acts of abuse, neglect, or misappropriation.

### **BACKGROUND CHECK AND REHABILITATION REVIEW PROCEDURES**

**Background Check Procedure.** 1999 Act 9 requires that all current employees be screened by February 1, 2000, and every four years thereafter. As part of the check, a prospective or current employee or other affected person is required to report any past crimes or findings that may act as a bar under the background check law. The regulatory agency or entity must then submit a criminal history record request to the Department of Justice and may also require fingerprinting cards for submission to the Federal Bureau of Investigation. If an applicant has lived outside Wisconsin within the past three years, or if the applicant's employment, licensing, or state court records provide reasonable basis for further investigation, the regulatory agency or entity must obtain the background information from the other state or U.S. jurisdiction in which the applicant resided. In addition, a reasonable effort must be made to follow up on final disposition of charges or incomplete background information. The process also includes verification of licenses and other necessary professional credentials.

**Rehabilitation Review.** Act 9 permits a person who receives a negative background check to demonstrate rehabilitation. A review is conducted by the agency that regulates the entity or, if the entity is located on an American Indian reservation, the review may be conducted by the tribe.

### **PENALTIES FOR NONCOMPLIANCE**

An entity that employs, contracts with or permits to reside at the entity, an ineligible person or that violates background check procedure may be required to forfeit not more than \$1,000 and may be subject to additional sanctions, including denial, revocation, or suspension of the entity's license or certification. Providing false or incomplete information may subject an applicant to the same forfeiture and other sanctions including denial or termination of employment.

### **FOR MORE INFORMATION**

Copies of Sections 48.685 and 50.065, Wisconsin Statutes, may be downloaded at [www.legis.state.wi.us](http://www.legis.state.wi.us) or obtained by calling the Legislative Reference Bureau at (608) 266-0342. Detailed information may be downloaded from the DHFS Website at [www.dhfs.state.wi.us/caregiver/](http://www.dhfs.state.wi.us/caregiver/) or obtained by calling (608) 264-9893 or 266-5775.