

Milwaukee County Department of Health & Human Services	Date Issued: October 23 2014	Reviewed: By: DHHS Contract Admin	Section: ADMINISTRATION	Policy No: DHHS 001	Pages: 1 of 5 (5 Attachments)
<input checked="" type="checkbox"/> Behavioral Health Division (BHD) <input checked="" type="checkbox"/> Housing Division (Housing) <input checked="" type="checkbox"/> Disabilities Services Division (DSD) <input checked="" type="checkbox"/> Division of Youth & Family Services (DYFS) <input checked="" type="checkbox"/> Management Services Division (MSD)	Effective Date: October 23, 2014 Revise Date: June 30, 2020	Subject: CAREGIVER BACKGROUND CHECKS / AMENDED MILWAUKEE COUNTY RESOLUTION			

I. POLICY

It is the policy of Milwaukee County Department of Health & Human Services (DHHS) that a **Caregiver Background Check (CBC)** be completed on all applicable caregivers/staff/employees/volunteers/interns, as defined within this policy. This policy applies to **all** DHHS contractors or service providers having reimbursable or non-reimbursable agreements including agencies/organizations with which DHHS has Purchase of Service contract(s), Fee-for-Service Agreement(s), Professional Service Agreement(s), Procurement or Price Agreement(s) or Memorandum(a) of Understanding. The results of the CBC must meet the requirements as stated under Wisconsin Caregiver Law (see *Attachment 1 – Chapter DHS 12 Caregiver Background Checks* and the amended Milwaukee County Caregiver Resolution, File No. 20-287 (see *Attachment 2*)).

OTHER POLICY REFERENCES (includes Add-Delete procedure, and CBC submission protocol)

*Providers of DYFS, DSD, Housing, and MSD – refer to “Staff Roster and Add-Delete Procedure, Policy No. 800-004”
<https://county.milwaukee.gov/EN/DHHS/Provider-Portal>

BHD:

*Providers of CARS – refer to “Contracted Agency Staff Add-Drop Procedure”
<http://milwaukeebhd.policystat.com/?lt=qhaRCXS6xPmzmujl7g3RdN>

*Providers of Wraparound Milwaukee – refer to “Provider Add, Drop and Record Maintenance, Policy No. 035”
<http://wraparoundmke.com/wp-content/uploads/2013/07/Provider-Add-Drop-and-Record-Maintenance.pdf> and
 “PROVIDER AGENCY RESPONSIBILITIES / GUIDELINES, Policy No. 054”
<http://wraparoundmke.com/wp-content/uploads/2013/07/054-Provider-Agency-Responsibilities-Guidelines.pdf>

II. DEFINITIONS

- A. **Caregiver/Employee/Volunteer** – a person who meets all of the following:
1. Is employed by, under contract with an entity, volunteer or intern.
 2. Has regular, direct contact with or access to the entity’s clients, their personal property, or client information.
 3. Is under the entity’s control.

A Caregiver is also a person who is one of the following:

1. The owner or administrator of an entity, whether or not they have regular, direct contact with clients.
2. A board member or corporate officer that has regular, direct contact with clients.

- B. **Regular Contact** –contact that is planned, scheduled, expected or periodic.

- C. **Direct Contact** –face-to-face proximity to a client that affords the opportunity to commit abuse or neglect of a client or misappropriation of a client’s property.

II. DEFINITIONS (cont'd)

- D. **Under the Entity's Control** – a person employed by or under contract with the entity for whom the entity does both of the following:
1. Determines whether a person employed by or under contract with the entity that has access to clients may provide care, treatment or other similar support service functions to clients being served by the entity.
 2. Directs or oversees one or more of the following:
 - a) The policy or procedures the person must follow in performing his or her duties as a caregiver/employee.
 - b) The conditions under which the person performs his or her duties.
 - c) The tasks performed by the person.
 - d) The person's work schedule.
 - e) The supervision or evaluation of the person's work or job performance, including imposing discipline or awarding performance awards.
 - f) The compensation the person may receive for performing his or her duties as a caregiver/employee.
- E. **"Provider"** – an agency, organization or individual with whom a DHHS contract, agreement or Memoranda of Understanding has been executed.
- F. **"Direct Service Provider"** (DSP) – Provider employee, volunteer, paid or unpaid intern, Independent Service Provider or subcontractor, who provides direct care and/or Covered Services to a Participant/Service Recipient on behalf of a Provider, for which the Provider receives compensation from the Purchaser under the agreement.
- G. **"Indirect Staff"** - is an employee, individual independent contractor or subcontractor who is not a DSP, but is associated with Covered Services as a supervisor, billing staff, case records and/or quality assurance worker, and/or is someone (i.e.: volunteer) who has access to clients, client property, and/or client information of Service Recipients. Agency owner, President, CEO, Executive Director, and/or Senior Staff are considered Indirect Staff if reporting to work at a site where Covered Services are provided.

III. PROCEDURE

- A. **Prior to the provision of service**, a CBC must be completed on all DSP and Indirect Staff as required by the State of Wisconsin Caregiver Law.
- B. **A complete CBC consists of the three following required documents:**
1. A completed Background Information Disclosure (BID) form (*must use current DHS BID F-82064 <https://www.dhs.wisconsin.gov/library/F-82064.htm>*). The initial BID must be dated no more than 90 days prior to the start of service. *All BID's (typed or handwritten) must contain a handwritten signature of the applicant. An electronic signature system date stamped is acceptable per required guidelines mentioned elsewhere in the contract.*
 2. A response from the Department of Justice (DOJ) Wisconsin Criminal History Record Request consisting of either a "no record found" response or a criminal record transcript (*see Attachment 4 – Sample DOJ*).
 3. A response letter (Caregiver Background Check) from the Department of Health Services (DHS) that reports the person's status, including administrative finding or licensing restrictions (*see Attachment 5 – Sample DHS Letter*).
 4. **Optional:** Conviction records through the Wisconsin Circuit Court Access (WCCA) system, formerly known as CCAP, online at <http://wcca.wicourts.gov> and may consider convictions found through WCCA which may or may not appear through the Wisconsin Criminal History Records Request process (the DOJ report).
- C. **If providing direct care and services to children and/or youth, qualified agency personnel are responsible for closely examining the results of the Caregiver Background Checks for criminal convictions or findings of misconduct by a governmental agency; and to make employment decisions in accordance with the requirements and prohibitions in the law and in the AMENDED MILWAUKEE COUNTY CAREGIVER RESOLUTION.**

III. PROCEDURE (cont'd)

- D. **All copies of ALL** Background Check information must be kept in the DSP or Indirect Staff's personnel file or other file for the **most recent five-year** period, for the express purpose of retaining all required CBC information.
- E. Agency shall have a **written policy** that is communicated to all DSP's and Indirect Staff upon hire, and annually thereafter, requiring immediate (*within 24 hours of the event*) notification to Agency of any new arrests, charges, or convictions. Communication of this policy shall be documented with the employee's signature and kept in the employee file. Upon notification from caregiver/employee/volunteer/intern to Agency as described above, Agency shall notify respective Network (BHD - bhdproviders@milwaukeecountywi.gov or DHHS dhscbc@milwaukeecountywi.gov) within one (1) business day.
- F. RESPECTIVE NETWORK or DHHS may also request from provider or obtain conviction records through the [Wisconsin Circuit Court Access \(WCCA\) system, formerly known as CCAP](http://wcca.wicourts.gov), online at: <http://wcca.wicourts.gov>, and may consider convictions found through WCCA which may or may not appear through the Wisconsin Criminal History Records Request process (the DOJ report).

IV. REQUIREMENTS

- A. **Within 90 days prior** to the provision of services, agencies shall conduct Background Checks at their own expense on all applicable staff/DSP's/Indirect Staff. Background Checks conducted at other agencies where individual may have been employed/volunteered are **NOT** transferrable to the new potential employer.
- B. After the initial Background Check, Providers are required to conduct a new Background Check **every four years** (*every four years means to the date of the last Background Check – i.e., if a Background Check was completed on 1/16/10, the next Check must be completed prior to or on the date of 1/16/14*), OR at any time within that period when Agencies have reason to believe that a new check should be obtained, or as often as is necessary to ensure that Individual Direct Service Providers and/or Indirect Staff have suitable backgrounds and are free of any barred convictions at all times that services are delivered.
- C. Agencies must obtain a Background Check from the previous State of residence if any prospective staff has been living in the State of Wisconsin for less than three (3) years either by obtaining the record from the other state, National Check or by obtaining a FBI fingerprint check.

Note: out-of-state checks are not available from all states – some are considered “closed” states. In these cases, FBI check must be obtained. National Criminal Search may be substituted for FBI check (“open” states only). Details for obtaining an FBI fingerprint check can be found at <http://www.doj.state.wi.us/dles/cib/cib-forms>.

- D. **A Background Check (all 3 parts) of a potential new staff that reveals any criminal history, regardless of the disposition or any finding of licensure restriction, denial or revocation, must be sent to the respective Network or DHHS with the Add Request Form before that individual will be approved to provide services or have indirect contact with clients.**
- E. If a disposition of a criminal charge is not given (*other than “pending” or “open”*), the disposition must be obtained by the Provider by contacting the Milwaukee County Clerk of Courts ~ fax: (414) 454-4074. If an “open or pending” charge would affect staff's ability to enter the Network or DHHS will suspend consideration until resolution of the charge. Once the disposition is final, it is the responsibility of the agency to provide the Network or DHHS with the final disposition (if agency still considering New Hire).

IV. REQUIREMENTS (cont'd)

- F. Agencies must notify the RESPECTIVE NETWORK (BHD - bhdproviders@milwaukeecountywi.gov) or DHHS (dhscbc@milwaukeecountywi.gov) **within one business day** to when any of the following occurs with one of their employees, DSP, Indirect Staff, owners, directors, etc.
- The person has been charged with or convicted of any crime.
 - The person has been or is being investigated for any act, offense or omission, including abuse, neglect or misappropriation.
 - The person has a substantiated finding of abuse, neglect or misappropriation.
 - The person has been denied a license or had their license restricted or otherwise limited.

G. **The Caregiver Background Check, review of criminal convictions, includes the following:**

- For any barred offense per *Wis. Stat. § 50.065* (See Attachment 5 for List of Barred Offenses: Table I (serving individuals 18 years of age or older) and Table II (serving individuals under age 18), and
- Additionally, for caregivers providing direct care to children and youth, review for any Wis. Stats. Chapter 948 offenses whether or not covered by state barred offense list (See Attachment 2, Amended Milwaukee County Resolution, File 20-287), and
- Substantially Related Test (DHS 12.06, and section IV, H. of this Policy).

DHHS will accept findings of rehabilitation of any individual as determined by the State of Wisconsin's appeal process under *Wis. Stat. § 50.065*.

- H. In addition to compliance with Caregiver Background Checks and the amended Milwaukee County Caregiver Resolution, provider agency will also consider conviction history of any candidate before requesting to add as a DSP and/or Indirect Staff to determine suitability based on a **substantially related offense test** as described in DHS 12.06 (https://docs.legis.wisconsin.gov/code/admin_code/dhs/001/12.pdf).

In the following instances, provider agency shall obtain a copy of the Criminal Complaint and Judgment of Conviction from the Clerk of Court's Office, to determine whether a conviction is substantially related to care of a client:

- Any recent (within 5 years) misdemeanor criminal convictions as listed in 50.065 Wis Stats; i.e. battery, disorderly conduct, invasion of privacy, harassment; etc. or,
- Any felony convictions (within 5 years); or
- Any charges with open dispositions (for offenses that would possibly affect the provider's ability to enter the Network or DHHS)

This documentation shall be retained in the personnel file and submitted to the Respective Network or DHHS upon request. When requested, the respective Network and/or DHHS will conduct an administrative review, on a case-by-case basis, to determine whether an offense is substantially related. The respective Network and/or DHHS reserves the right to make final determination regarding conviction records and whether a conviction is substantially related to the Covered Service in question.

Agency should take into consideration the following when making a **substantially related** determination:

- Severity of past convictions.
- Number of past convictions.
- Patterns of past criminal behavior.
- Duration of time between the first charge/conviction and the last charge/conviction (*i.e., does the person have a criminal history that spans 2 years or 20 years*).
- Time frame between the last charge/conviction and current date (*i.e., were they last charged/ convicted of a crime 1 year ago or 18 years ago*).
- Specific convictions and their relevance to performing the job/position being applied for.

- I. Agencies shall not assign any staff to conduct work under the agreement who does not meet the requirements of the Wisconsin Caregiver Laws and the amended Milwaukee County Caregiver Resolution, File No. 20-287.

For References and more Information

Please see Wisconsin Department of Health Services (DHS) 12 "Caregiver Background Checks," ss. 48.685 "Children's Code" and 50.065 "Uniform Licensure" of Wisconsin Statutes.

DHS Caregiver Program -> <http://www.dhs.wisconsin.gov/caregiver/>

Wisconsin Caregiver Program Manual -> <https://www.dhs.wisconsin.gov/library/P-00038.htm>

Attachments:

1. DHS 12 – Caregiver Background Checks
2. Amended Milwaukee County Caregiver Resolution File No. 20-287
3. *Sample DOJ*
4. *Sample DHS Letter*
*BID form not attached - (use **current version** DHS F-82064 Background Information Disclosure - <https://www.dhs.wisconsin.gov/library/F-82064.htm>)
5. WI Caregiver Program Offenses Affecting Caregiver Eligibility (Offense List)