

Marquette University

July 1, 2009

PROCEDURES FOR COMPLIANCE WITH THE WISCONSIN CAREGIVER LAW UPP 4-26 WORKING WITH MINORS

I. INTRODUCTION

The Wisconsin Caregiver Law requires background and criminal history checks of certain personnel who are responsible for the care, safety and security of children and adults. UPP 4-26, Working with Minors, contemplates that persons in contact with minors will undergo a criminal background check prior to participation in the event or activity. The purpose of this document is to assist University faculty and staff in understanding their roles and responsibilities pursuant to UPP 4-26 with regard to reporting events or activities that involve minors.

Many University academic programs already require background checks under the Wisconsin Caregiver Law. For this reason, the Wisconsin Caregiver Law background checks are being used as the basis for background checks under UPP 4-26. Some examples of entities governed by the Wisconsin Caregiver Law are hospitals, day care facilities, hospices and most entities where health care is provided. To assure that confidentiality and privacy are preserved to the maximum extent possible, the administration involved in obtaining forms and filing background checks under UPP 4-26 will be in addition to, and entirely separate from, other academic programs where background checks under the Wisconsin Caregiver Law take place.

II. ADMINISTRATIVE

To ensure efficiency in conducting background checks and otherwise complying with the Policy each department/college/unit will be required to report and register each activity or program which includes minors as participants to the Office of Risk Management.

Implementation

Each unit will submit information on the Reporting Form for Events Part 1 and provide supporting documentation on the activity or program for determination for inclusion under the policy. Submission will be at least annually for those continuing and ongoing programs.

Each department/college/unit will identify individuals who will have contact with minors as part of this activity including students, volunteers, and faculty and staff employees. The Reporting Form Part 2, labeled as Individuals for WI Caregiver Act should be completed listing the names of individuals and submitted to Risk Management as soon as individuals are known and as soon as possible before the event/activity/program initiation. Under UPP 4-26, individuals are not permitted to participate in activities that involve direct interaction with minors, unless an exception has been granted by the Vice President of Administration or his or her designee, until background checks have been received and required training completed.

Unless otherwise exempted, the department/college/unit representative will provide a copy of the State of Wisconsin Department of Health Services Form F-82064A Background Check Form State of WI dhs to each identified person listed or will provide information on where they can obtain the State form for completion. Department representatives will be responsible to instruct these individuals to complete the form and forward completed forms to the Office of Risk Management. Information and forms will be posted on the Office of General Counsel website and the Risk Unit website.

The department/college/unit is responsible to assure that all identified persons attend an awareness training session offered by Risk Management. Special arrangements can be made with the Director of Risk Management where absolutely necessary.

From time to time, the Office of Risk Management and General Counsel and Administration will provide workshops to the liaisons and point people.

Notice to Individuals of the Requirement of Background Check

Each department/college/unit will provide notice about the background checks to identified persons who will participate in the event/activity that may have direct contact with minors. The notice, when applicable, should include the following information:

- ___ Information that individuals will be required to go through a background check to participate in programs with minors and provide the information to complete the F-82064A form. This completed form is to be forwarded to the Office of Risk Management. Information on how to contact the Office of Risk Management and address to submit the form must be communicated.
- ___ Information on where additional data can be accessed by individuals.
 - Form F-82064A “Background Information Disclosure (BID) can be found at <http://dhs.wisconsin.gov/forms/F8/F82064.pdf>
 - Information about the Wisconsin Caregiver Background Check including FAQ’s, forms can be found at <http://www.dhfs.state.wi.us/caregiver/index.htm>
 - As list of barred crimes and offenses requiring review is available at <http://dhs.wisconsin.gov/caregiver/StatutesINDEX.HTM>
- ___ Information that the background check under the Wisconsin Caregiver Act may fall under the Fair Credit Reporting Requirements and provide a summary of Rights under the Fair Credit Reporting Act if requested by the individual. Information on where data on the Fair Credit Reporting Requirements can be found may also be provided at www.ftc.gov/credit.
- ___ The University will conduct the background check under this policy even if a background check has been obtained for another program not subject to this Policy. This includes checks that may be necessary if a person or student participates in clinical placements, internships, or similar activities.
- ___ Background check records will be kept strictly confidential and reviewed only by the Office of General Counsel and the Office of Administration. Individuals will not be able to participate in programs with direct contact with minors until any discrepancies are resolved unless the requirement is waived by the Vice President for Administration or his or her designee.

The Office of Risk Management will maintain a list of individuals who have undergone a Wisconsin Caregiver Law background check in accordance with this Policy. The background check will be performed every four years for individuals who continue to participate in Marquette programs involving minors.

Adverse Actions

Individuals subject to this Policy will be informed if the University relies upon information obtained as a result of the background to make its determinations under UPP 4-26. To accomplish this, the Office of General Counsel and Administration have instituted a process to maintain confidentiality of information and to contact individuals to review information, make appropriate changes if errors are present, and provide information on any adverse action.

Notification and Communication

For events/activities/programs involving minors that are reported where there is a question on whether the event/activity/program falls under the Policy and/or if a review is required for exemption in part or all of this Policy, the Office of Risk Management shall notify the Office of Administration. Administration representatives will review submitted information and contact the appropriate Department/College/Units if additional data or clarification is needed for review. The Office of Administration will provide final confirmation to Departmental units on any full or part exemption to the Policy.

Department/College/Units will receive information from the Office of Risk Management when an event/activity/program is under review for exemption by the Office of Administration and/or when an individual record is under review based on information received from a background check. The Offices of Administration and/or the Office of General Counsel will contact the Department if any further action is needed.

Background Check Completion Process

1. A completed Wisconsin Dept of Health Services (DHHS) Form F-82064A is received by the Office of Risk Management.
2. A response from DOJ has been received by the Office of Risk Management. Responses include:
 - a “no record found” response or
 - a criminal record transcript ; and/or if/when applicable
 - IBIS letter from DHFS that reports the person’s administrative finding or licensing restriction status. (Related to health care violations.)
3. Other documentation is received if/when information is needed to complete the background check, such as other state’s conviction records, military discharge papers, arrest and conviction disposition information from local clerks of courts or tribal courts.

III. FORMS TO BE COMPLETED

Department/College/Units should complete and submit to the Office of Risk Management:

1. Each department/college/unit is responsible to complete the Reporting Form for Events Involving Minors – Part 1
2. Each department/college/unit is responsible to provide Reporting Form Part 2, Individuals for WI Caregiver Act. The form should be used to list and to update information on individuals who will be interacting with minors as part of the event or activity.

Each identified person, volunteer, student and employee should fill out:

1. The DHHS *Background Information Disclosure* (BID) Form F- 82164A at <http://dhs.wisconsin.gov/forms.F8/F82064.pdf>

The completed form should be submitted to the Office of Risk Management by the individual.

Office of Risk Management
Address: Academic Support Facility (735 N. 17th Street) P.O. Box 1881 Milwaukee, WI 53201-1881
Telephone: (414) 288-6806 Fax (414) 288-0600

IV. RECORD STORAGE

Completed forms and information obtained on Background Checks from the Wisconsin Caregiver Act that applies to compliance with this policy shall be kept in the Office of Risk Management. Listing of individuals who have had completed background checks as part of this policy shall be kept in the Office of Risk Management. Lists on background checks that may have been conducted for other purposes in other departmental units will not be shared nor will information on background checks obtained in compliance with UPP 4-26 be shared with other departmental units.

Department should retain information that may be necessary to inform participants and persons who are working with minors of the requirements for background checks, form completion and awareness training. Department should retain information on the specifics of the event/activity/program which involves minors for at least seven years.

The records that Schools and Colleges collect as a result of conducting background checks are confidential. The student records are also subject to the Family Educational Rights and Privacy Act (FERPA). All departments must take steps to preserve the confidentiality and privacy of these records.

V. RESOURCES

For comprehensive information about the Wisconsin Caregiver Background Check law, including FAQs, forms, and more, see <http://www.dhfs.state.wi.us/caregiver/index.htm>. If you have any questions about the law, please contact the Office of General Counsel. If you have any questions about the University Policy and Procedures, please contact the office of Risk Management or the Office of Administration.

VI. CAREGIVER OFFENSES Summary

If a Background Information Disclosure form, a caregiver background check, or any other information shows that a person was convicted of any of the offenses immediately below within 5 years before the information was obtained, the department, county department, child welfare agency, school board, or entity, as applicable, shall 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.

940.19 (1) Misdemeanor battery
940.195 Battery to an unborn child
940.20 Battery, special circumstances
941.30 Reckless endangerment

942.08 Invasion of privacy
947.01 Disorderly conduct
947.013 Harassment

CONVICTIONS

Entities and programs that serve any clients who are under the age of 18

Wis. Stats. Crime

940.01 First degree intentional homicide
940.02 1st degree reckless homicide
940.03 Felony murder
940.05 2nd degree intentional homicide
940.12 Assisting suicide
940.19 (2) through (6) Battery (felony)
940.22 (2) or (3) Sexual exploitation by therapist; duty to report
940.225 (1), (2), or (3) 1st, 2nd, or 3rd degree sexual assault
940.285 Abuse of vulnerable adults (misdemeanor or felony)
940.29 Abuse of residents of a penal facility
940.295 Abuse or neglect of patients & residents (misdemeanor or felony)

948.02 (1) or (2) 1st or 2nd degree sexual assault of a child
948.025 Repeated acts of sexual assault of same child
948.03 (2) (a), (b), or (c) Physical abuse of a child – intentional causation of bodily harm
948.05 Sexual exploitation of a child (felony)
948.055 Causing a child to view or listen to sexual activity
948.06 Incest with a child
948.07 Child enticement
948.08 Soliciting a child for prostitution
948.11 (2)(a) or (am) Exposing child to harmful material or harmful descriptions or narrations
948.12 Possession of child pornography
948.13 Child sex offender working with children
948.21 (1) Neglect of a child – resulting in death (felony)
948.30 Abduction of another's child; constructive custody

OTHER OFFENSES

- Finding by a governmental agency of neglect or abuse of a client, or of misappropriation of a client's property
- Finding by a governmental agency of child abuse or neglect