

Dec 2

Clearinghouse Rule 99-071

Kinship Care

PROPOSED ORDER OF THE
DEPARTMENT OF HEALTH AND FAMILY SERVICES
REPEALING AND RECREATING RULES

To repeal and recreate chapter HFS 58, relating to the eligibility of nonparent relatives of children to receive kinship care or long-term kinship care benefits to help them provide care and maintenance for the children.

Analysis Prepared by the Department of Health and Family Services

Kinship care and long-term kinship care are care and maintenance of a child who resides outside of the child's own home, either temporarily or for the long term, with a relative who could be an adult brother or sister, a first cousin, a nephew or niece, an uncle or aunt or a grandparent, among others.

A recent session law, 1995 Wisconsin Act 289, created s. 48.57 (3m), (3p) and (3t), Stats., which authorize a county or tribal child welfare agency to make a monthly payment of \$215, called a kinship care benefit, to an approved relative to help the relative provide care and maintenance for the child. These payments started on January 1, 1997 and by January 1, 1998 had replaced income maintenance payments under s. 49.33, Stats., for care provided by non-legally responsible relatives. The kinship care statutes were amended in October 1997, effective January 1, 1998, by 1997 Wisconsin Act 27 to make the Department responsible for administration of the kinship care program in Milwaukee County. The statutes were amended again in April 1998 by 1997 Wisconsin Act 105 to add s. 48.57 (3n), Stats., relating to long-term kinship care; in June 1998 by 1997 Wisconsin Act 237 to direct the Department to promulgate rules which set forth criteria for determining the eligibility of a kinship care or long-term kinship care relative to receive the monthly kinship care or long-term kinship care payment; in May 2000 by 1999 Wisconsin Act 103 to clarify that a caregiver relative must apply for other forms of assistance for which the child may be eligible; in May 2000 by 1999 Wisconsin Act 133 to allow payments beyond age 18 under certain conditions; and in May 2000 by 1999 Wisconsin Act 162 to make technical changes to the definition of relative.

As noted, s. 48.57 (3m) (ar), Stats., specifically directs the Department to create administrative rules. These rules address the following issues, among others:

- Conditions for applying for a benefit
- How to apply for a benefit
- Agency review of applications
- Requesting an exemption for good cause from the requirement to cooperate with the agency in securing payment of child support
- Eligibility criteria for kinship care and long-term kinship care, including the best interests of the child, need for the placement and jurisdictional considerations
- The use of waiting lists
- Reassessment at least annually of a kinship care relative's eligibility
- Appeal rights of an applicant who has been denied a kinship care or long-term kinship care benefit or of a kinship care or long-term kinship care relative whose benefit has been discontinued following a reassessment

The Department's authority to repeal and recreate these rules is found in ss. 48.57 (3m) (ar) and 227.11 (2), Stats. The rules interpret ss. 48.57 (3m), (3n), (3p) and (3t), Stats.

SECTION 1. Chapter HFS 58 is repealed and recreated to read:

Chapter HFS 58

ELIGIBILITY FOR THE KINSHIP CARE AND LONG-TERM KINSHIP CARE PROGRAM

Subchapter I – General provisions

- HFS 58.01 Authority and purpose.
- HFS 58.02 Applicability.
- HFS 58.03 Definitions.
- HFS 58.04 Requirements for applicants and kinship care and long-term kinship care relatives.
- HFS 58.05 Additional criteria prohibited.
- HFS 58.06 Timeline for action on an application.
- HFS 58.07 Payments prohibited.
- HFS 58.08 Appeal and review rights.
- HFS 58.09 Procedures for requesting a good cause exemption to requirement for cooperation in securing child support.

Subchapter II – Provisions applicable to the kinship care program only

- HFS 58.10 Eligibility criteria.
- HFS 58.11 Verification of relationship and residence and notification.
- HFS 58.12 Criteria for placement on waiting list.
- HFS 58.13 Reassessment of eligibility.

Subchapter III – Provisions applicable to the long-term kinship care program only

- HFS 58.14 Relationship verification requirements.
- HFS 58.15 Determination and agreement.
- HFS 58.16 Review of eligibility.

Subchapter I – General provisions

HFS 58.01 Authority and purpose. This chapter is promulgated under the authority of ss. 48.57 (3m) (ar) and 227.11 (2), Stats., to establish criteria and procedures for determining initial and continuing eligibility of a relative who provides care and maintenance for a child to receive a monthly payment to help with the expenses involved in providing that care and maintenance.

HFS 58.02 Applicability. (1) TO WHOM THE RULES APPLY. This chapter applies to relatives who apply for kinship care and long-term kinship care benefits, to relatives who are receiving those benefits on behalf of children residing with them, to county departments and tribal child welfare agencies administering the kinship care and long-term kinship care programs, to the department as it administers the kinship care and long-term kinship care programs in Milwaukee County and to other agencies under contract with the department, a county department or a tribal child welfare agency for the purpose of administering the kinship care and long-term kinship care programs.

(2) APPLICABILITY OF SUBCHAPTERS. The provisions in subch. I apply to the entire chapter. The provisions in subch. II apply to the kinship care program only. The provisions in subch. III apply to the long-term kinship care program only.

(3) EFFECTIVE DATE. This chapter applies to all applicants for kinship care and long-term kinship care benefits who apply on or after [revisor to insert effective date] and to kinship care and long-term kinship care relatives currently receiving a kinship care payment at the time of the first reassessment of eligibility after [revisor to insert effective date].

(4) TIMEFRAME FOR COMPLETING WRITTEN POLICIES. Each agency administering the kinship care program shall promulgate written policies as required under ss. HFS 58.06 (2), 58.11 (1) (c), 58.12 (2) and (3) (b) within 90 days after [revisor to insert effective date].

HFS 58.03 Definitions. In this chapter:

(1) "Adult resident" means a person 18 years of age or over who lives at the home of a relative with the intent of making that home his or her home or who lives for more than 30 days cumulative in any 6-month period at the home of a relative.

(2) "Applicant" means a child's relative who has applied to an agency to receive benefits under the kinship care or long-term kinship care program for the child for whom that relative is providing or will provide care in the relative's home.

(3) "Child" means a person under 18 years of age or a person 18 years of age or over, but under 19 years of age, who is a full-time student in good academic standing at a secondary school or its vocational or technical equivalent and who is reasonably expected to complete his or her program of study and be granted a high school or high school equivalency diploma.

(4) "Child support agency" has the meaning given in ch. DWD 15.

(5) "Completed application" means a document that includes all of the information, required by an agency under s. 48.57, Stats., and this chapter, that an agency requires to make a decision as to whether or not the criteria for eligibility are met and whether or not a payment may be made. A "completed application" does not include the information obtained in response to a criminal background check.

(6) "Criminal background check" means the background check under s. 48.57 (3p), Stats.

(7) "Department" means the Wisconsin department of health and family services.

(8) "Employee" means an individual retained by a kinship care or long-term kinship care relative on a regular basis who has regular contact with a child for whom kinship care benefits are paid to the kinship care relative or long-term kinship care benefits are paid to the long-term kinship care relative.

(9) "Good academic standing" means that the child is achieving a level of success, as determined by the local school, that will allow the child to graduate.

(10) "Kinship care" means the program described under s. 48.57 (3m), Stats., which provides specific assistance to children and families through the provision of a monthly payment to a relative.

(11) "Kinship care agency" or "agency" means a county department of social services under s. 46.22, Stats., a county department of human services under s. 46.23, Stats., the department for a county having a population of 500,000 or more, a tribal agency appointed by the tribal governing body, or a public or private agency under contract with a county department, the department or a tribal agency for the purpose of administering all or part of the kinship care program or the long-term kinship care program.

(12) "Kinship care payment" or "kinship care benefit" means a monthly payment of \$215 to a relative who is providing care and maintenance for a child.

(13) "Kinship care relative" means a relative who is receiving a kinship care payment.

(14) "Long-term kinship care" means the program described under s. 48.57 (3n), Stats., which provides specific assistance to children and families through the provision of a monthly payment to a relative.

(15) "Long-term kinship care payment" or "long-term kinship care benefit" means a monthly payment of \$215 to a relative who is providing care and maintenance for a child.

(16) "Long-term kinship care relative" means a relative who has been appointed as the child's guardian under s. 48.977, Stats, and who has applied for and is receiving a long-term kinship care payment under s. 48.57 (3n), Stats.

(17) "Medical assistance" means the assistance program under 42 USC 1396 and ss. 49.43 to 49.499, Stats.

(18) "Relative" means an adult who is the child's stepparent, brother, sister, stepbrother, stepsister, first cousin, nephew, niece, aunt, uncle or any person of a preceding generation as denoted by the prefix of grand, great or great-great, whether by blood, marriage or legal adoption, or the spouse of any person named in this subsection, even if the marriage is terminated by death or divorce.

(19) "Session" means a regular academic term of schooling that includes a semester and a quarter.

HFS 58.04 Requirements for applicants and kinship care and long-term kinship care relatives. (1) **APPLICATION.** A relative who wants to apply for kinship care or long-term kinship care payments shall apply to the kinship care agency, and shall complete any form or forms required by the agency.

(2) **CRIMINAL BACKGROUND CHECK.** (a) 1. An applicant for kinship care or a kinship care relative or long-term kinship care relative shall provide information sufficient for the agency to conduct, under s. 48.57 (3p), Stats., a criminal background check on the applicant or kinship care or long-term kinship care relative, any other adult resident of the applicant's or kinship care or long-term kinship care relative's home and any employee or prospective employee of the applicant or kinship care or long-term kinship care relative.

2. The applicant or kinship care or long-term kinship care relative shall also attest, in writing, that neither he nor she, nor any adult resident or prospective adult resident of his or her home nor any employee or prospective employee has any history of contact with a child protective services agency or arrests or convictions that could adversely affect the child or the applicant's or kinship care or long-term kinship care relative's ability to care for the child.

(b) A kinship care or long-term kinship care relative shall notify the agency of the intent of a person to become an adult resident of the kinship care or long-term kinship care relative's home when that intent becomes known, if that information is available, or within 2 working days after that person's assumption of residence in the home if the intent is not known in advance.

(c) Agencies shall conduct criminal background checks pursuant to the requirements of s. 48.57 (3p), Stats., and shall consider whether any history, arrests or convictions might adversely affect the child or the applicant's or kinship care or long-term kinship care relative's ability to care for the child.

(3) COOPERATION WITH THE AGENCY. An applicant shall cooperate with the agency in the application process and a kinship care or long-term kinship care relative shall cooperate with the agency in the review process. Applicants and kinship care or long-term kinship care relatives shall do all of the following:

(a) Apply for other forms of assistance, including financial and medical, for which the child may be eligible. The agency shall assist the kinship care or long-term kinship care relative or prospective kinship care or long-term kinship care relative in applying for medical assistance for the child on whose behalf the kinship care or long-term kinship care application is made.

(b) Complete, to the extent the applicant or kinship care or long-term kinship care relative is able, any form required for referral of the child's parent or parents to the child support agency, except that the kinship care or long-term kinship care relative or prospective kinship care or long-term kinship care relative may claim good cause for not cooperating in accordance with the procedures specified under s. HFS 58.09. That claim, if approved by the agency, negates this responsibility.

(c) Notify the agency whenever a person becomes or ceases to be an adult resident of the kinship care or long-term kinship care relative's home or the kinship care or long-term kinship care relative hires or proposes to hire an employee.

(4) VERIFICATION OF SCHOOL STATUS FOR 18 YEAR OLDS. (a) If the child is 18 years of age or over, but under 19 years of age, the agency shall verify that the child is enrolled full-time at a secondary school or its vocational or technical equivalent, is in good academic standing and is reasonably expected to complete his or her program of study and be granted a high school or high school equivalency diploma.

(b) The applicant or kinship care or long-term kinship care relative shall provide the kinship care agency with a statement signed by the kinship care or long-term kinship care relative and an official from the child's school or alternative high school program stating that the child meets all of the following criteria:

1. The child is enrolled full-time in high school or a high school equivalency program or, if school is not currently in session, the child was enrolled during the previous session, and will be enrolled during the next session.

2. The child is currently in good academic standing, or if the determination is made when school is not in session, the child was in good academic standing at the close of the previous session.

3. The child is reasonably expected to complete his or her program of study and be granted a high school or high school equivalency diploma.

(c) A kinship care or long-term kinship care relative shall notify the agency when any of the following occur:

1. The child graduates.

2. The child earns a high school or high school equivalency diploma.

3. The child discontinues school or his or her education program.

4. The child is no longer in good academic standing.

(5) REAPPLICATION FOLLOWING DENIAL OR TERMINATION OF BENEFITS. If an applicant is denied a payment or a kinship care or long-term kinship care relative's payment is terminated and the applicant reapplies, the agency may suspend processing of the application if it determines that the situation related to the rationale for the denial or termination has not changed. Within 2 working days after the agency decides to suspend processing of the application, the agency shall send to the applicant a written notice of its decision. The notification of suspension shall include a statement of the applicant's right to appeal the decision.

HFS 58.05 Additional criteria prohibited. An agency may not create criteria for eligibility for the kinship care or long-term kinship care program that are in addition to the criteria set forth in ss. HFS 58.04, 58.10, 58.14 and 58.15 (2).

HFS 58.06 Timeline for action on an application. (1) (a) An agency shall request a criminal background check from the department of justice and all applicable law enforcement agencies within 5 working days after receipt of the information necessary to conduct the criminal background check from the applicant or kinship care or long-term kinship care relative.

(b) An agency shall approve or deny an application for a kinship care or long-term kinship care payment within 45 days after the agency receives the completed application.

(2) Each agency shall establish a written policy indicating when the kinship care or long-term kinship care payment will begin, but the written policy shall provide for the payment to begin no later than the day the child was placed with the kinship care or long-term kinship care relative, if the placement is court ordered and the relative successfully applied for a kinship care long-term kinship care benefit, or the day on which the completed application is received, if the living arrangement is not court ordered, unless the applicant for payment in a non-court ordered situation is placed on a waiting list under s. HFS 58.12. A retroactive payment to the appropriate date shall be made once the application is approved.

HFS 58.07 Payments prohibited. (1) WHEN RELATIVE IS RECEIVING FOSTER CARE PAYMENT OR ANOTHER TYPE OF KINSHIP CARE PAYMENT. No relative may simultaneously receive a kinship care payment or a long-term kinship care payment and a foster care payment under s. 48.62 (4), Stats., for the care and maintenance of the same child.

(2) WHEN CHILD IS RECEIVING SUPPLEMENTAL SECURITY INCOME. No kinship care payment under s. 48.57 (3m), Stats., or long-term kinship care payment under s. 48.57 (3n), Stats., may be made to a relative on behalf of a child who is receiving supplemental security income under 42 USC 1381 to 1383c or state supplemental payments under s. 49.77, Stats.

(3) INABILITY TO RECEIVE KINSHIP CARE AND LONG-TERM KINSHIP CARE PAYMENTS SIMULTANEOUSLY. No relative may simultaneously receive a kinship care payment and a long-term kinship care payment for the same child.

HFS 58.08 Appeal and review rights. (1) NOTICE. (a) If an agency denies approval to an applicant for a kinship care or long-term kinship care payment, discontinues a kinship care or long-term kinship care payment or denies a good cause claim under s. HFS 58.09, the agency shall notify the applicant or kinship care or long-term kinship care relative in writing of its decision and the reasons for the decision, and shall include in the notice information about the applicant's or kinship care or long-term kinship care relative's right to appeal or request a review of that decision under sub. (2).

(b) If the notice states a payment will be discontinued, the notice shall also include a statement that the payment shall not be terminated until after the hearing decision is issued following the hearing if the kinship care or long-term kinship care relative requests a hearing within 10 days after the date of the notice. The notice shall also state that if the decision to terminate the payment is upheld at or after the appeal hearing, any payments made while the appeal was pending may be recovered by the agency.

(2) APPEAL OR REVIEW AGENCY. (a) 1. If an application is denied or a payment is terminated as the result of a negative criminal background of the applicant or kinship care or long-term kinship care relative, another adult resident of the applicant's or kinship care or long-term kinship care relative's home or an employee of the applicant or kinship care or long-term kinship care relative, the applicant or kinship care or long-term kinship care relative may request a review of that decision to one of the following, whichever is applicable:

- a. The director of the county department.
- b. In Milwaukee County, the director of the department's bureau of Milwaukee child welfare.
- c. Where a tribe is administering the kinship care program, a person designated by the governing body of the American Indian tribe or band.

Note: An applicant for a long-term kinship care payment or a long-term kinship care relative is not entitled to a review if the denial is based on a criminal record check. However, the director of the county agency, the designated tribal representative or the director of the Bureau of Milwaukee Child Welfare may approve the long-term kinship care agreement if that person determines that the arrest or conviction would not adversely affect the child or adversely affect the long-term kinship care relative's ability to care for the child.

2. A review under subd. 1. for an applicant for kinship care or a kinship care or long-term kinship care relative shall include consideration of the following factors on a case-by-case basis:

- a. The length of time between the date of the arrest, conviction or of the imposition of the penalty and the date of the review.
- b. The nature of the violation or penalty and how that violation or penalty affects the ability of the kinship care relative to care for the child.
- c. Whether making an exception to the denial or prohibition would be in the best interests of the child.

3. A review under subd. 1. shall be held within 30 days after the request for a review is made and the results of the review shall be provided to the applicant or kinship care or long-term kinship care relative within 10 working days after the review.

(b) If an application is denied or a payment is terminated for a reason other than a criminal background, including any decision related to a good cause claim under s. HFS 58.09, the applicant, kinship care relative or long-term kinship care relative may appeal that decision to the division of hearings and appeals in the Wisconsin department of administration.

Note: The mailing address of the Division of Hearings and Appeals is P.O. Box 7875, Madison, WI 53707.

(c) If the agency fails to act on an application within the 45 days allowed under s. HFS 58.06 (1) (b), the applicant may appeal that failure to the department of administration's division of hearings and appeals.

(3) TIMING OF APPEALS. An appeal or review requested under sub. (2) shall be filed not more than 45 days after the date of the decision to deny or terminate a payment or, if the agency takes no action on an application, not more than 45 days after the end of the 45-day period under s. HFS 58.06 (1) (b). An appeal or review shall be considered filed if received by the division of hearings and appeals or review agency, whichever is appropriate, not more than 45 days after the date of notification of the decision to deny or terminate a kinship care or long-term kinship care payment or, if the appeal relates to inaction on an application by the agency, within 90 days after the applicant's submission of a completed application. An appeal or review requested more than 45 days after that date shall be denied.

HFS 58.09 Procedures for requesting an exemption for good cause to the requirement for cooperation in securing child support. (1) DEFINITIONS. In this section:

(a) "Emotional harm" means that the child or relative is so emotionally impaired that his or her functioning is substantially affected.

(b) "Serious nature" means:

1. In reference to a relative, that the physical or emotional impairment is or will be substantial enough to affect the relative's capacity to care for the child.

2. In reference to a child, that the physical or emotional impairment is or will be substantial enough to affect the child's emotional, mental or physical functioning.

(2) RIGHT TO REQUEST GOOD CAUSE EXEMPTION. An applicant or kinship care or long-term kinship care relative may request a good cause exemption from the requirement under s. HFS 58.04 (3) (b) to cooperate with the kinship care agency in referring the child's parent or parents to the child support agency.

(3) CLAIMING GOOD CAUSE. (a) *Good cause notice.* 1. A kinship care agency shall provide a printed good cause notice developed by the department to each applicant for kinship care or long-term kinship care benefits.

2. The notice shall describe the right to refuse to cooperate for good cause in securing child support and shall include advising the applicant or kinship care or long-term kinship care relative of all of the following:

a. The potential benefits the child may derive from securing child support.

b. That, by law, cooperation in securing child support is a condition of eligibility for kinship care and long-term kinship care benefits.

c. That good cause for refusing to cooperate may be claimed and that if the kinship care agency finds that there is good cause, the applicant or kinship care or long-term kinship care relative will be excused from the cooperation requirement.

d. That upon request or on receipt of a claim of good cause, the kinship care agency will provide a printed good cause claim under par. (c).

3. The notice shall be signed and dated by the applicant or kinship care or long-term kinship care relative and the kinship care agency worker. The original shall be placed in the applicant's or kinship care or long-term kinship care relative's case record and the applicant or kinship care or long-term kinship care relative shall be given a copy.

4. The child support agency shall ask each applicant for kinship care or long-term kinship care benefits or the kinship care or long-term kinship care relative, upon initial contact, if the good cause notice under subd. 1. has been received. If notice has not been received, the person shall be given the notice and shall be given the opportunity to claim good cause for not cooperating. The child support agency shall refer any kinship care or long-term kinship care applicant or relative who wishes to claim good cause back to the kinship care agency for good cause determination.

(b) *Good cause claim.* 1. A kinship care agency shall provide a printed good cause claim form developed by the department to any applicant or kinship care or long-term kinship care relative on request.

2. The good cause claim form shall describe the circumstances that support a good cause claim and how a claim should be documented. The claim form shall state that the kinship care agency directs the child support agency to proceed to attempt to secure child support without the participation of the kinship care or long-term kinship care applicant or relative.

3. The claim form shall be signed by the applicant or kinship care or long-term kinship care relative in the presence of a kinship care agency worker or a notary public. The signature of the applicant or kinship care or long-term kinship care relative initiates the claim.

4. The original signed claim form shall be placed in the applicant's or kinship care or long-term kinship care relative's case record and the applicant or kinship care or long-term kinship care relative shall be given a copy. A copy shall be sent to the child support agency with instructions to either not initiate or to suspend activities to secure child support until the claim is determined. The copy shall be attached to the referral to the child support agency when good cause is claimed at the time of application for kinship care or long-term kinship care, and at other times the copy shall be forwarded to the child support agency within 2 days after the claim is signed.

(c) *Burden on applicant or kinship care or long-term kinship care relative to establish good cause circumstances.* An applicant or kinship care or long-term kinship care relative who refuses to cooperate in securing child support and who claims good cause for refusing to cooperate has the burden of establishing existence of a good cause circumstance, except as provided in subs. (5) (c) and (11) (a).

(4) GOOD CAUSE CIRCUMSTANCES. The kinship care agency, upon reviewing a claim for exemption from the requirement to cooperate in securing child support, shall determine if requiring cooperation is contrary to the best interests of the child or of the applicant or kinship care or long-term kinship care relative. An exemption may be granted only for one of the following reasons:

(a) The kinship care or long-term kinship care relative's cooperation can be reasonably anticipated to result in any of the following:

1. Physical harm of a serious nature to the child for whom the benefit is sought or to the kinship care or long-term kinship care relative with whom the child is living.

2. Emotional harm of a serious nature to the child for whom the benefit is sought or to the kinship care or long-term kinship care relative with whom the child is living.

(b) One of the following circumstances exists and it can be reasonably anticipated that proceeding to secure child support would be detrimental to the child:

1. The child for whom support is sought was conceived as the result of incest or sexual assault.
2. A petition for adoption of the child has been filed with a court.
3. The parent or parents are being assisted by a social services agency in deciding whether to terminate parental rights and the discussions have not gone on for more than 3 months.

(5) DETERMINATION OF GOOD CAUSE. (a) Within 45 days from the date a claim is signed, the kinship care agency shall determine if there is good cause for an applicant or kinship care or long-term kinship care relative to refuse to cooperate in securing child support. The 45-day period may be extended by the kinship care agency upon written notice to the applicant or kinship care or long-term kinship care relative if the applicant's or kinship care or long-term kinship care relative's case record documents that additional time is needed for either of the following reasons:

1. Information needed to verify the claim cannot be obtained by the kinship care agency within 45 days.

2. Supporting evidence was not submitted by the applicant or kinship care or long-term kinship care relative within 20 days as required under sub. (10) (a).

(b) The determination of whether there is good cause or not shall be reviewed by the kinship care or long-term kinship care worker's supervisor and signed by that person.

(c) The final determination of whether there is good cause or not shall be in writing and shall be placed in the applicant's or kinship care or long-term kinship care relative's case record. This shall include all evidence submitted in support of the claim and a written statement as to how the kinship care agency reached its determination. If there is no evidence or verifiable information available which suggests otherwise, the kinship care agency shall conclude that a refusal to cooperate was, in fact, a case of cooperation to the fullest extent possible.

(d) Written notice of the final determination shall be given to the applicant or kinship care or long-term kinship care relative, including the right to an appeal under s. HFS 58.08 (2) (b), and to the child support agency.

(e) If the kinship care agency determines that good cause does not exist, the applicant or kinship care or long-term kinship care relative shall be notified and have 45 days from the date of the notification to do one of the following:

1. Withdraw the claim and cooperate.
2. Exclude any affected child from the application or case.
3. Withdraw the application or request that the case be closed.
4. Request a hearing under s. HFS 58.08 (2) (b).

(f) When the 45 days provided for in par. (e) have expired and no action as specified in par. (e) has occurred, the kinship care agency shall deny the kinship care or long-term kinship care

application or payment for the affected child. The denial shall remain in effect until there is cooperation or until cooperation is no longer an issue.

(6) APPROVING OR CONTINUING KINSHIP CARE OR LONG-TERM KINSHIP CARE PAYMENT. (a) If the applicant or kinship care or long-term kinship care relative is cooperating with the kinship care agency in furnishing evidence and information for a determination on good cause, the kinship care agency may not deny, delay, reduce or discontinue the kinship care or long-term kinship care benefit, pending the determination, provided that all other eligibility criteria are met.

(b) The kinship care agency shall not use the 45-day period in sub. (5) (a) to extend an eligibility determination beyond the maximum period allowed in s. HFS 58.06 for processing applications.

(7) PARTICIPATION OF THE CHILD SUPPORT AGENCY. (a) The child support agency shall be given the opportunity to review and comment on the findings of the kinship care agency prior to the final determination on good cause by the kinship care agency. Consideration shall be given to any recommendation from the child support agency.

(b) The child support agency may participate in any hearing resulting from a good cause determination.

(c) The final decision on good cause is made by the kinship care agency.

(8) EVIDENCE. An initial good cause claim shall be based on evidence in existence at the time of the claim. There is no limitation on the age of the evidence. Once a final decision, including any hearing, is made on the claim, any subsequent claim shall have new evidence as its basis. Any of the following types of evidence may be used in determining good cause:

(a) Birth certificates or medical or law enforcement records that indicate that the child may have been conceived as a result of incest or sexual assault.

(b) Court documents or other records which indicate that a petition for the adoption of the child has been filed with a court.

(c) Court, medical, criminal, child protective services, social services, psychological, school or law enforcement records which indicate that a parent might inflict physical or emotional harm on the child or on the applicant or kinship care or long-term kinship care relative.

(d) Medical records indicating the emotional health history and present emotional health status of the applicant or kinship care or long-term kinship care relative or the child, or a written statement from a mental health professional indicating a diagnosis or prognosis concerning the emotional health of the applicant or kinship care or long-term kinship care relative or the child.

(e) A written statement from a public or private social services agency that the parent is being assisted by that agency to determine whether or not to terminate parental rights.

(f) Sworn statements from persons other than the parent or applicant or kinship care or long-term kinship care relative with knowledge of the circumstance on which the good cause claim is based.

(g) Any other supporting or corroborative evidence.

(9) SPECIAL REQUIREMENTS FOR PROOF OF GOOD CAUSE. (a) *Emotional harm.* If a good cause claim is based on emotional harm to the applicant or kinship care or long-term kinship care relative or to the child, the kinship care agency shall consider all of the following:

1. Present emotional state of the person subject to emotional harm.
2. Emotional health history of the person subject to emotional harm.
3. Intensity and probable duration of the emotional harm.
4. Degree of cooperation to be required.
5. Extent of involvement of the child, the applicant or kinship relative in the establishment of the support enforcement activity to be undertaken.

(b) *Physical harm.* If a good cause claim is based on anticipated physical harm and no evidence is submitted, the kinship care agency shall conduct an investigation according to the provisions of sub. (11).

(c) *Incest or sexual assault.* If a good cause claim is based on the applicant's or kinship care or long-term kinship care relative's statement that the child was conceived as a result of incest or sexual assault, but this is not documented, the claim may be reviewed as one based on emotional harm.

(10) GENERAL REQUIREMENTS FOR PROOF OF GOOD CAUSE. (a) The applicant or kinship care or long-term kinship care relative who claims good cause shall provide supporting evidence within 20 days from the day the claim is signed. The kinship care agency worker may, with supervisory approval, determine that more time is necessary because of difficulty in obtaining certain evidence.

(b) There shall be at least one document of evidence, in addition to any sworn statements from the applicant or kinship care or long-term kinship care relative. The applicant or kinship care or long-term kinship care relative shall be encouraged to provide as many types of evidence as possible. The kinship care agency shall offer assistance in obtaining necessary evidence.

(c) When sufficient evidence to substantiate a good cause claim has not been submitted, the kinship care agency shall do all of the following:

1. Notify the applicant or kinship care or long-term kinship care relative that additional evidence is required and specify that evidence.
2. Advise the applicant or kinship care or long-term kinship care relative on how to obtain the evidence.
3. Make a reasonable effort to obtain specific documents that are not reasonably attainable by the applicant or kinship care or long-term kinship care relative without assistance.

(d) If after having been notified that additional evidence is required, the applicant or kinship care or long-term kinship care relative continues to refuse to cooperate or the evidence obtained does not establish good cause, the kinship care agency shall then notify the applicant or kinship care or long-term kinship care relative that if no further action is taken within 45 days from the date of the notification, good cause will not be found and that the applicant or kinship care or long-term kinship care relative may do any of the following:

1. Withdraw the claim and cooperate.
2. Exclude affected children from the application or case.
3. Withdraw the application or request that the case be closed.
4. Request a hearing under s. HFS 58.08 (2) (b).

(e) When the 45 days provided for in par. (d) have expired and no action as specified in par. (d) has occurred, the kinship care agency shall deny the application for, or close the case of, any affected child.

(11) INVESTIGATION OF GOOD CAUSE CLAIM. (a) The kinship care agency shall conduct an investigation of any good cause claim based on anticipated physical harm, both when the claim is credible without supporting evidence and when supporting evidence is not available. Good cause shall be found when both the applicant's or kinship care or long-term kinship care relative's statement and the investigation satisfy the kinship care agency that the applicant or kinship care or long-term kinship care relative has good cause.

(b) The kinship care agency may also investigate any good cause claim when the applicant's or kinship care or long-term kinship care relative's statement, together with the corroborative evidence, does not provide a sufficient basis for a determination.

(c) Neither the kinship care agency nor the child support agency shall, in the course of any investigation, contact the parent from whom support would be sought without first notifying the applicant or kinship care or long-term kinship care relative in writing of the intention to do so. The applicant or kinship care or long-term kinship care relative shall have a 45-day period from the date of the notification to:

1. Present additional supporting or corroborative evidence or information so that contact with the parent is unnecessary.
2. Exclude an affected child from the application or case.
3. Withdraw the application or request that the case be closed.
4. Request a hearing.

(d) When the 45 days provided for in par. (c) have expired and no action as specified in par. (c) has occurred, the kinship care agency shall deny the application for or close the case of any affected child.

(12) NOTICE OF GOOD CAUSE FINDING. (a) *Notice to the child support agency.* The kinship care agency shall notify the child support agency in writing whether good cause is found or is not found and, if found, whether or not the child support agency should proceed to secure child support without participation of the applicant or kinship care or long-term kinship care relative.

(b) *When good cause is found.* When good cause is found, the kinship care agency shall do one of the following, as appropriate:

1. Direct the child support agency to suspend all further case activities if it is determined that the child support agency's action, even without participation of the applicant or kinship care or

long-term kinship care relative, can be reasonably anticipated to result in physical or emotional harm to the child or the kinship care or long-term kinship care relative.

2. a. Advise the child support agency to proceed without the participation of the applicant or kinship care or long-term kinship care relative if the child support agency's action can reasonably be anticipated to not result in physical or emotional harm to the child or the kinship care or long-term kinship care relative.

b. The kinship care agency shall notify the applicant or kinship care or long-term kinship care relative immediately of its intended recommendation to the child support agency under subd. 2. a., but shall wait for 45 days from the date of the notification to notify the child support agency in order to give the applicant or kinship care or long-term kinship care relative time to exclude any affected child from the application or case, to withdraw the application or request that the case be closed or to request a hearing.

c. The kinship care agency's recommendation under subd. 2. a. to the child support agency shall be in writing and shall contain the kinship care agency's findings and the basis for its determination. A copy of the written recommendation shall be included in the applicant's or kinship care or long-term kinship care relative's case record.

(c) *When good cause is not found.* When good cause is not found, the kinship care agency shall do all of the following:

1. Provide written notice to the applicant or kinship care or long-term kinship care relative.

2. Wait 45 days before taking further action. If after the 45 days, the applicant or kinship care or long-term kinship care relative still refuses to cooperate and did not exclude the affected child or withdraw the application or request that the case be closed, the kinship care agency shall deny the application for any affected child or close the case. If the application is denied or the case is closed for not cooperating in securing child support, the kinship care agency shall inform the applicant or kinship care or long-term kinship care relative, in writing, of the right to a hearing under s. HFS 58.08 (2) (b). If a hearing is requested, the kinship care agency shall direct the child support agency not to proceed with any support enforcement action during the hearing process.

(13) REVIEW OF GOOD CAUSE DETERMINATIONS. (a) Good cause determinations based on permanent circumstances need not be reviewed.

(b) The kinship care agency shall review good cause determinations involving circumstances that are subject to change at each reassessment of eligibility under s. HFS 58.13 or 58.16, as appropriate, or upon the receipt of new evidence.

(c) When good cause is determined to no longer exist, the kinship care agency shall rescind its determination and immediately notify the applicant or kinship care or long-term kinship care relative, in writing, of this and of the right to a hearing under s. HFS 58.08 (2) (b), but shall not notify the child support agency for 45 days from the date of the notification to allow the applicant or kinship care or long-term kinship care relative to do one of the following:

1. Cooperate.

2. Exclude any affected child from the case.

3. Request that the case be closed.

4. Request a hearing under s. HFS 58.08 (2) (b).

(d) When the 45 days provided for in par. (c) have expired and no action as specified in par. (c) 1. to 3. has occurred, the kinship care agency shall do both of the following:

1. Deny the application for or close the case of any affected child.

2. Inform the applicant or kinship care or long-term kinship care relative of the right to a hearing under s. HFS 58.08 (2) (b).

Subchapter II - Provisions applicable to the kinship care program only

HFS 58.10 Eligibility criteria. Before approving an application for a kinship care payment, an agency shall determine that all of the following criteria are met:

(1) NEED OF THE CHILD. (a) The child needs the kinship living arrangement. The agency shall determine that the child needs the kinship living arrangement by determining at least one of the following:

1. The child's need for adequate food, shelter and clothing can be better met with the relative than with the child's parent or parents.

2. The child's need to be free from physical, sexual or emotional injury, neglect or exploitation can be better met with the relative than with the child's parent or parents.

3. The child's need to develop physically, mentally and emotionally to his or her potential can be better met with the relative than with the child's parent or parents.

4. The child's need for a safe or permanent family can be better met with the relative than with the child's parent or parents.

(b) In making a determination that one or more of the criteria in par. (a) are met, the agency shall personally interview the prospective kinship care relative.

(c) Each agency administering the kinship care program shall establish a written policy describing its requirements for documentation for determining need for the living arrangement.

(d) The agency shall maintain in the kinship care relative's case record a description of the determination of need that was used to approve the application and shall maintain a narrative statement of information obtained through any interviews.

(2) BEST INTERESTS OF THE CHILD. (a) The proposed kinship living arrangement is in the best interests of the child. The agency shall determine that the kinship living arrangement is in the best interests of the child by proceeding as follows:

1. If the child is placed with the relative by the order of a court pursuant to jurisdiction under s. 48.13 or 938.13, Stats., by a tribal court in a matter related to a child in need of protection or services, by the action of the child welfare agency pursuant to a court order or by a child welfare agency which is the guardian of the child, the agency shall assume that the living arrangement is in the best interests of the child and shall maintain a copy of the court order or other documentation in the kinship care relative's case record.

2. If the child is not placed by order of a court, the agency shall determine if the kinship living arrangement is in the best interests of the child by making a reasonable effort to contact all the child's custodial parents to determine that he or she or they are aware of and have consented to the living arrangement. The effort to contact the child's custodial parents shall be made by mail and the agency may supplement this effort by phone or in person. If consent is received, the kinship living arrangement is determined to be in the best interests of the child. If the agency, after making reasonable efforts to contact all custodial parents, is unable to contact the custodial parents or custodial parent, the agency may determine that the inability to make such contact indicates that the placement with the relative is in the best interests of the child. If both parents are custodial parents, the approval of one of the parents may suffice for the agency to determine that the living arrangement is in the best interests of the child. If only one parent is a custodial parent, the approval of that parent suffices for the agency to determine that the living arrangement is in the best interests of the child. In addition to determining that parental consent exists, the agency shall determine that both of the following conditions exist:

a. The applicant's or kinship care relative's parenting history and parenting ability do not include behaviors or actions that are contrary to the health, safety or welfare of the child.

b. A minor child residing in the applicant's or kinship care relative's home has not committed any delinquent acts or other acts that endangered the safety of another child or that could adversely affect the child for whom the kinship care payment would be made or the applicant's or kinship care relative's ability to care for the child.

(b) The agency shall maintain in the kinship care relative's case record either a copy of the court order placing the child with the kinship care relative under par. (a) 1. or a narrative summary of the determination under par. (a) 2.

(3) JURISDICTION OF THE COURT. (a) The child is or could potentially be subject to the jurisdiction of the court or, if the child is age 18, the child could potentially be subject to the jurisdiction of the court if the child were under 18 years of age. The agency shall make at least one of the following findings:

1. That the child's placement has been ordered by the court under s. 48.13 or 938.13, Stats., or by a tribal court in a child welfare matter.

2. That court jurisdiction, if sought, would exist under s. 48.13 or 938.13, Stats., or with the tribal court in a child welfare matter.

3. That court jurisdiction, if sought, would exist for a child 18 years of age or over, but under 19 years of age, under s. 48.13 or 938.13, Stats., or with the tribal court in a child welfare matter but for the fact that the child is too old for such jurisdiction.

4. That if the child remained in his or her home the child would be at risk of meeting one or more of the criteria under s. 48.13 or 938.13, Stats.

5. That if the child is 18 years of age or over, but under 19 years of age, and the child remained in his or her home, the child would be at risk of meeting one or more of the criteria under s. 48.13 or 938.13, Stats., but for the fact that the child is 18 years of age or over.

(b) A finding under par. (a) that the child would be at risk of meeting one or more of the criteria under s. 48.13 or 938.13, Stats., shall be based on reasonable probability and shall be justified by one or more of the following:

1. That a similar determination has been made regarding the child or a sibling of the child within the past 12 months.

2. That the child or a parent of the child has evidenced behavior which, if increased in degree, could result in court jurisdiction under s. 48.13 or 938.13, Stats., or in tribal court jurisdiction for a reason described in s. 48.13 or 938.13, Stats.

3. That the parent or parents of the child have made threatening and credible statements which, if carried out, could result in court jurisdiction under s. 48.13, Stats., or in tribal court jurisdiction for a reason described in s. 48.13, Stats.

4. That information provided by the relative or other credible person and, if available, the parent or parents of the child indicates that it is reasonable to believe that the situation in the child's home could result in the child being at risk of meeting one or more of the criteria under s. 48.13 or 938.13, Stats, if the child were to remain in the home.

(c) The agency shall maintain in the kinship care relative's case record a copy of the court order placing the child with the kinship care relative or shall include in the case record a narrative summary of the justification for the finding under par. (b) 2. to 4.

HFS 58.11 Verification of relationship and residence and notification. (1)

VERIFICATION OF RELATIONSHIP. (a) Each agency administering the kinship care program shall establish a written policy describing its standards for establishing verification of the relative relationship and shall indicate whether any specific documents, such as a birth certificate, a marriage license, guardianship papers or paternity papers, will be required. Each agency's written policy shall include both of the following:

1. A statement that if the agency's normal standard for verification has been met but the agency has come to suspect that the relationship is in doubt, the agency may request additional information.

2. A statement that the agency shall accept alternative forms of verification of the relationship, as specified in the agency's written policy, if documents specified in the agency's written policy under par. (a) are not available to the applicant.

(b) An applicant shall provide to the agency verification required by the agency by written policy that the applicant is related to the child.

(c) The agency shall maintain in a kinship care relative's case record a copy of any written verification provided by the kinship care relative, at the time of application or later, that is used by the agency to verify the relationship. If the verification is not in writing, the agency shall maintain in the case record a narrative statement of the verification.

(2) VERIFICATION OF RESIDENCE. (a) Each agency administering the kinship care program shall establish a written policy describing its standards for establishing verification of residence, including a description of any specific documentation, such as the child's medical assistance card or a written statement from a school representative, that may be required.

(b) Each written policy under this subsection shall include a statement that the agency shall accept alternative forms of verification of the residence, as specified in the agency's written policy, if documents specified in the agency's written policy under par. (a) are not available to the applicant.

(c) The applicant or kinship care relative shall provide to the agency verification required by the agency by written policy that the child is or will be residing with the applicant or kinship care relative.

(d) The agency shall maintain in a kinship care relative's case record a copy of any written verification provided by the kinship care relative, at the time of application or later, or otherwise obtained by the agency that is used by the agency to verify that the child resides with the kinship care relative. If the verification is not in writing, the agency shall maintain in the case record a narrative statement of the verification.

(3) NOTIFICATION. At the time that a relative first applies for kinship care and at every review thereafter, if the child is placed by a court order, the agency shall notify the relative caretaker that he or she may be eligible for long-term kinship care pursuant to this section and shall notify the relative as to the eligibility requirements for long-term kinship care.

HFS 58.12 Criteria for placement on waiting list. (1) An agency may place an applicant on a waiting list if the agency has expended its kinship care benefit allocation for the agency's fiscal year or has established a caseload which will result in the agency expending its kinship care benefit allocation by the end of the agency's fiscal year and has notified the department of the need for a waiting list.

Note: Notice required in sub. (1) should be submitted to Kinship Care Program Coordinator, DHFS/DCFS, P.O. Box 8916, Madison, WI 53708-8916.

(2) An agency may prioritize applicants on the waiting list according to any of the following criteria that shall be described in the agency's written policy:

(a) The lack of stability in the living arrangement if a payment is not made.

(b) The order in which the applications are received.

(c) The level or urgency of the child's need under s. HFS 58.10 (1) (a).

(d) If the child is under the guardianship of the kinship care applicant by a statutory provision other than s. 48.977, Stats.

(3) (a) When financial resources allow an applicant placed on a waiting list to receive a payment, the agency shall notify the applicant in writing that the funding is available. The written notice shall require the applicant to notify the agency of his or her continuing interest in and eligibility for the payment.

(b) An applicant who is moved off a waiting list and approved shall receive payment for the period beginning not later than the first day of the following month. An agency may provide a retroactive payment for all or part of the period during which the applicant was on the waiting list in accordance with the agency's written policies.

(4) An applicant may not be placed on a waiting list if the child for whom a payment is requested has been placed with the kinship care relative by a court under s. 48.355, 48.357 or 48.977, Stats., or pursuant to a petition under s. 938.13, Stats., or by a court under s. 938.355 or 938.357, Stats., or by a tribal court in a matter related to the child's need for protection or services.

HFS 58.13 Reassessment of eligibility. (1) FREQUENCY OF REASSESSMENT. An agency shall reassess eligibility of a kinship care relative for the kinship care program at least

every 12 months after the date the agency initially began making payments to the kinship care relative, to determine if the requirements under ss. HFS 58.04 and 58.10 continue to be met.

(2) EFFECT OF REASSESSMENT. If an agency determines through the reassessment process under sub. (1) that the requirements under ss. HFS 58.04 and 58.10 are not met, the agency shall discontinue making kinship care payments to the relative.

Subchapter III - Provisions applicable to the long-term kinship care program only

HFS 58.14 Relationship verification requirements. If the applicant is applying for a long-term kinship care payment, the applicant shall provide to the agency proof that he or she has been appointed the child's guardian under s. 48.977 (2), Stats.

HFS 58.15 Determination and agreement. (1) DETERMINATION. Before approving an application for a long-term kinship care payment, an agency shall do all of the following:

(a) Determine, through proof provided by the applicant, that the applicant has been named guardian for the child under s. 48.977, Stats.

(b) Inspect the applicant's home.

(c) Interview the applicant.

(d) Determine, through pars. (a) to (c), that the child's long-term placement with the applicant is in the best interests of the child.

(2) LONG-TERM KINSHIP CARE AGREEMENT. If an agency approves the long-term kinship care payment, the agency and the relative shall enter into a written agreement under which the long-term kinship care relative agrees to provide care and maintenance for the child and the agency agrees, subject to s. 48.57 (3p) (hm), Stats., and s. HFS 58.04 (2), to make a monthly long-term kinship care payment to the relative until the earliest of the following:

(a) The date on which the child attains the age of 19 years under s. HFS 58.04 (4).

(b) The date on which the child, if over 18 years of age, is no longer a full-time student in good academic standing or is no longer reasonably expected to graduate.

(c) The date on which the child dies.

(d) The date on which the child is placed outside the long-term kinship care relative's home under a court order or under a voluntary placement agreement under s. 48.63, Stats.

(e) The date on which the child ceases to reside with the long-term kinship care relative.

(f) The date on which the long-term kinship care relative's guardianship under s. 48.977, Stats., terminates.

(g) The date on which the child moves out of the state.

HFS 58.16 Review of eligibility. (1) FREQUENCY OF REVIEW. An agency shall conduct a review of each long-term kinship care placement at least every 12 months after the date the

agency initially began making payments to the long-term kinship care relative, to determine if any of the circumstances under s. HFS 58.15 (2) has occurred.

(2) EFFECT OF REVIEW. If an agency determines through the review process under sub. (1) that one or more of the circumstances under s. HFS 58.15 (2) have occurred, the agency shall discontinue making kinship care payments to the relative.

The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, as provided in s. 227.22 (2), Stats.

Wisconsin Department of Health and
Family Services

Dated:

By: _____
Phyllis J. Dubé
Secretary

SEAL:

**PROPOSED ADMINISTRATIVE RULES - HFS 58
ANALYSIS FOR LEGISLATIVE STANDING COMMITTEES
PURSUANT TO S. 227.19(3), STATS.**

Need for Proposed Rules

Kinship care and long-term kinship care are care and maintenance of a child who resides outside of the child's own home, either temporarily or for the long term, with a relative who could be an adult brother or sister, a first cousin, a nephew or niece, an uncle or aunt or a grandparent, among others.

A recent session law, 1995 Wisconsin Act 289, created s. 48.57 (3m), (3p) and (3t), Stats., which authorize a county or tribal child welfare agency to make a monthly payment of \$215, called a kinship care benefit, to an approved relative to help the relative provide care and maintenance for the child. These payments started on January 1, 1997 and by January 1, 1998 had replaced income maintenance payments under s. 49.33, Stats., for care provided by non-legally responsible relatives. The kinship care statutes were amended in October 1997, effective January 1, 1998, by 1997 Wisconsin Act 27 to make the Department responsible for administration of the kinship care program in Milwaukee County. The statutes were amended again in April 1998 by 1997 Wisconsin Act 105 to add s. 48.57 (3n), Stats., relating to long-term kinship care; in June 1998 by 1997 Wisconsin Act 237 to direct the Department to promulgate rules which set forth criteria for determining the eligibility of a kinship care or long-term kinship care relative to receive the monthly kinship care or long-term kinship care payment; in May 2000 by 1999 Wisconsin Act 103 to clarify that a caregiver relative must apply for other forms of assistance for which the child may be eligible; in May 2000 by 1999 Wisconsin Act 133 to allow payments beyond age 18 under certain conditions; and in May 2000 by 1999 Wisconsin Act 162 to make technical changes to the definition of relative.

As noted, s. 48.57 (3m) (ar), Stats., specifically directs the Department to create administrative rules. These rules address the following issues, among others:

- Conditions for applying for a benefit
- How to apply for a benefit
- Agency review of applications
- Requesting an exemption for good cause from the requirement to cooperate with the agency in securing payment of child support
- Eligibility criteria for kinship care and long-term kinship care, including the best interests of the child, need for the placement and jurisdictional considerations
- The use of waiting lists
- Reassessment at least annually of a kinship care relative's eligibility
- Appeal rights of an applicant who has been denied a kinship care or long-term kinship care benefit or of a kinship care or long-term kinship care relative whose benefit has been discontinued following a reassessment

Response to Clearinghouse Recommendations

The Department accepted all of the Clearinghouse recommendations with the following exceptions:

1.c. Comment: HFS 58.03 (14) defines "relative" in terms of "a child's adult stepparent, brother...." The definitions of "kinship care relative" and "long-term kinship care relative" in s. 48.57 (3m) (a) and (3n) (a), Stats., do not make use of the word "adult." This raises two questions. First, does the word "adult" apply to all of the individuals listed in the definition of "relative"? Second, what statutory authority exists to require that a kinship care relative or a long-term kinship care relative be an adult?

Response: No change. The Department believes that it would be illogical to assume that the Legislature would consider making kinship care payments to a minor to care for another minor.

1.e. Comment: Section HFS 58.08 (1) (c) 2. provides that an approved applicant who is moved off a waiting list must receive payment for the period beginning not later than the first day of the following month. In addition, an agency may provide a retroactive payment for all or part of the period during which the applicant was on the waiting list under the agency's written policies. Section 48.57, Stats., generally gives the department the authority to determine eligibility for kinship payments. What statutory authority exists for delegating this responsibility to a kinship care agency?

Response: No change. Section 48.57, Stats., directs counties to administer the child welfare system. In addition, s. 46.03 (17), Stats., authorizes the Department to contract with county agencies, which it does, for services the Department is authorized to provide. Under s. 48.57, Stats., and as expressed in what is now ss. HFS 58.04, 58.05, 58.13 and 58.16, the Department has established parameters within which counties (and tribes) can determine eligibility. However, the Department believes it may occasionally be in the best interests of the children for their kinship care relative or their long-term kinship care relative to receive payments that would have been made were it not for the existence of a waiting list. Therefore, the Department is simply giving counties the option of providing a retroactive payment for all or part of the period during which applicants were waiting for payments.

1.i. Comment: Section HFS 58.08 provides for waiting lists for the kinship care program, and s. HFS 58.05 (3) (intro.) indicates that the waiting list may also apply to the long-term kinship care program. The statutes are ambiguous as to whether kinship care or long-term kinship care are entitlements and waiting lists are not allowed or whether kinship care are entitlements and waiting lists are allowed. The issue of whether a county department must make a payment when the state appropriation to reimburse counties has been depleted has not been resolved.

With respect to kinship care, s. 48.57 (3m) (am) (intro.), Stats., provides that:

From the appropriation under s. 20.435 (3) (cz) and (kc), the department shall reimburse counties having populations of less than 500,000 for payments made under this subsection and shall make payments under this subsection in a county having a population of 500,000 or more. A county department and, in a county having a population of 500,000 or more, the department shall make payments for \$215 per month to a kinship care relative who is providing care and maintenance for a child if all the following conditions are met:

A comparable provision in s. 48.57 (3n) (am) (intro.), Stats., applies to long-term kinship care.

Legislative Fiscal Bureau Paper #462 (dated June 4, 1997) discussed the kinship care statute as it existed before July 1, 1997 and stated the following:

DHFS staff contend that, because the current statutes make reference to the appropriation used to support these payments, it is not clear whether counties are required to make these payments, or whether payments are subject to the amounts budgeted for these payments. By extending this argument, DHFS staff indicate that it may be permissible for counties to establish waiting lists for these payments if state funding is insufficient to meet the costs of making these payments.

To address this issue, the [Joint Finance] Committee could clarify the current statutory provision by either: (a) deleting references to the statutory appropriation; or (b) explicitly stating that funding for kinship care payments to families is limited to the amount appropriated for this purpose.

On June 4, 1997, the Joint Finance Committee voted on both of these alternatives, and the vote was Ayes, 8; Noes, 8, on both. As neither alternative was adopted, the statute, which was ambiguous, was retained. (In an unrelated matter, the statute has since been modified with respect to Milwaukee County to provide for DHFS takeover of child welfare services there.) Thus, legislative history does not appear to provide a clear record as to what the Legislature intended with respect to using waiting periods for kinship care.

The long-term kinship care program was originally recommended by the Joint Legislative Council's Special Committee on Adoption Laws and enacted as 1997 Wisconsin Act 105. A review of discussions by that Committee does not indicate that the issue of waiting lists or entitlements was raised.

Response: No change. The Department has opinions from two Department attorneys that waiting lists are allowable. The language included in the Governor's 1999-2001 budget clearly stating that this program is not an entitlement is merely to clarify the Department's existing interpretation, not to change it from an entitlement to a non-entitlement.

5.c. Comment: In s. HFS 58.05 (1) (a) 1. a., b., c. and d., the reference to "relative" should be changed to the defined term "kinship care relative." This comment also applies to Appendix A, (1) (b).

Response: No change. Even though the chapter has been reorganized in response to Clearinghouse suggestions, at this point in the rules, i.e., before approving an application for a kinship care payment, the person is a relative as defined in s. HFS 58.03 (18). A kinship care relative, as defined under s. HFS 58.03 (13), is a relative who is receiving a kinship care payment.

5.d. Comments: Section HFS 58.05 (1) (b) 1. b. provides that when a child is not placed by a court order, the best interests of the child are determined by making a reasonable effort to contact the child's parent or parents to determine that he or she or they are aware of and have consented to the living arrangement. Section HFS 58.05 (1) (b) 1. b. then provides that that consent must determine best interests. The following comments apply:

(1) It is not clear how best interests are determined if it is not possible, after making a reasonable effort, to contact the child's parent or parent's.

(2) It is not clear whether it is necessary to make a reasonable effort to contact all of a child's known parents, or only one parent. If the latter is the case, how is it determined which parent should be contacted?

(3) It is not clear what criteria is to be used if two parents are contacted and one agrees, but one disagrees, with that particular living arrangement.

(4) It appears that the statutory best interests of the child requirement for kinship care is based solely on whether the child's parent or parents have consented to the living arrangement. Section HFS 58.05 (2) prohibits any other criteria from being used. Was it the intention that no consideration other than parental consent be used to determine that placement with a particular relative is in the best interests of the child?

(5) As correctly noted in this provision, for the long-term kinship care program, s. 48.57 (3n) (am) 2., Stats., requires that the agency interview the applicant to determine if long-term placement is in the best interests of the child. Thus, parental consent is not at issue. The first two sentences of s. HFS 58.05 (1) (b) 1. b. do not make it clear that they do not apply to long-term kinship care.

Response: (1) The Department has amended what is now s. HFS 58.10 (2) (a) 2. to respond to this possibility by stating: "If the agency, after making reasonable efforts to contact the parents or custodial parent, is unable to contact the parents or custodial parent, the agency may determine that the inability to make such contact indicates that the placement with the relative is in the best interests of the child."

(2) and (3) The Department has amended what is now s. HFS 58.10 (2) (a) 2. to respond to these possibilities by stating: "If both parents are custodial parents, the approval of one of the parents may suffice for the agency to determine that the living arrangement is in the best interests of the child."

(4) No, the Department did not intend that no consideration other than parental consent be used to determine that placement with a particular relative is in the best interests of the child. To clarify the Department's requirement, it has added requirements at what is now s. HFS 58.10 (2) (a) 2. a. and b.

(5) The Department has amended what is now s. HFS 58.10 (2) (a) 2. [previously 58.05 (1) (b) 1. b.] to delete references to long-term kinship care.

5.f. Comment: Section HFS 58.05 (3) (intro.) provides that if an agency approves a long-term kinship care payment, the agency and the relative, if the relative is willing, shall enter into a written agreement. To what does the phrase "if the relative is willing" refer? Willing to provide long-term kinship care? Willing to enter into a contract? What happens if the relative is not willing to enter into a contract?

Response: The Department has relocated s. HFS 58.05 (3) to become s. HFS 58.15 (2) and has removed the phrase "if the relative is willing."

5.g. Comment: The last sentence of Appendix A (4) (intro.) provides that: "An exemption may be granted only for any of the following reasons:..." If the intent is that an exemption will be granted if one of the conditions occurs, this should be rephrased to read: "An exemption shall be granted for any of the following:..."

Response: No change. The purpose of this section is strictly to limit the reasons for which an exemption may be granted.

Public Hearings

The Department held six (6) hearings on the proposed rules. The hearings were held at the following places on the noted dates:

- June 14, 1999 Wausau
- June 15, 1999 Milwaukee
- June 21, 1999 Madison
- November 29, 2000 Madison

The last public hearing was held in response to changes to the rules that resulted from legislative changes subsequent to the June public hearings.

A combined total of 9 individuals testified on the proposed rules. Of those, 3 provided oral testimony at the public hearings and 6 provided written comments. A list of persons who attended a hearing or submitted written comments, their comments and the Department's response to the comments are included in this document.

The Department made a number of modifications to the rules in response to public comments. Generally, the Department did all of the following:

- Clarified what information an agency could request an applicant to provide
- Clarified the language related to criminal background check requirements and actions based on the results of criminal background check
- Clarified that an applicant need only provide that information he or she has rather than provide all of the information required (this relates primarily to making referrals to the child support agency)
- Repealed the requirement that information provided by the applicant must be in writing.
- Created an allowance for an applicant to provide alternative types of verification of the nature of the relationship and of the child's residence in the home of the applicant
- Repealed a requirement that an applicant, after denial, must wait two months to re-apply
- Repealed a requirement that the child for whom the payment is to be made must be interviewed by the agency
- Clarified what efforts must be undertaken to contact the parent of the child to determine if they are supportive of the placement
- Clarified the standard for determining whether court jurisdiction exists or might exist in the future
- Clarified the date on which the payments must be effective when the child is placed with a relative by court order
- Clarified the relative caregiver's right to receive payments during the time that an appeal is pending

Final Regulatory Flexibility Analysis

These rules apply to the following agencies and individuals: The Department of Health and Family Services, the Division of Hearings and Appeals in the Department of Administration, County Departments of Human/Social Services, Tribal Child Welfare Agencies and individuals who apply for a kinship care or long-term kinship care benefit.

None of these affected agencies or individuals are "small businesses" as defined in s. 227.114(1)(a), Stats.

**Proposed Ch. HFS 58 Creation
Hearing Attendees or Commenters**

The following is a complete list of the persons who attended a public hearing or submitted written comments on the proposed Ch. HFS 58. With each person's name and affiliation is an indication of the individual's position on the proposed rules and whether or not the individual testified or provided written comments. The number preceding a name serves in the summary of hearing comments to indicate the person who made the specific comment.

Name and Address	Position	Action
1. Cheryl Smith 3051 Sand Lake Road Crandon, WI 54520 Representing Sokaogon Chippewa Community	Opposes parts of rules	Testified orally
2. Janice Strong 637 W. Chambers Ave Milwaukee, WI	Opposes definition of relative	Testified orally
3. Ed Paulson Ellsworth, WI Representing Pierce Co.	Opposes parts of rules	Written comments only
4. Don Maurer Waukesha, WI Representing Waukesha County	Opposes parts of rules	Written comments only
5. William Adams Racine, WI Representing Racine Co.	Opposes parts of rules	Written comments only
6. Nancy Morey Kenosha, WI Representing Kenosha County	Opposes parts of rules	Written comments only
7. Patricia DeLessio 230 W. Wells Street Milwaukee, WI 53203 Representing Legal Action of Wisconsin	Opposes parts of rules	Written comments only
8. Carol Medaris 16 N. Carroll Street Madison, WI 53703 Representing WI Council on Children & Families	Opposes parts of rules	Written comments only
9. Fay Annamitta P.O. Box 910 Keshena, WI 54135 Representing Menominee Indian Tribe/Menominee Tribal Social Services	Opposes parts of rules	Testified orally and in writing

SUMMARY OF HFS 58 HEARING TESTIMONY

**Proposed Chapter HFS 58, Wis. Adm. Code
Eligibility for the Kinship Care Program**

Rule Reference (citation in brackets corresponds to citation as found in reorganized, final proposed chapter)	Comment (numbers indicate person making comment)	Department Response
General	There is not enough funding to fund all the families. Also funding for administrative costs is inadequate. The tribe has had to fund the Kinship Care position for 6 months of the year, as they have no Community Aids funds to cover the extra 6 months. The rules add extra administrative duties through requiring additional items to be verified, and yet there is no additional funding. (9)	No change. While the Department empathizes with the financial issues raised, the funding for the program is a legislative issue separate from the rule. The rule merely formalizes procedures that are, for the most part, already required by quite specific statutory language.
General	The forms will have to be changed to accommodate the new rules. (9)	The Department is currently in the process of revising the rules. The revised rules should be available before the end of December 2000.
General	The Department has changed the rules regarding Kinship Care since the beginning, always without adding funds. (9)	The policies (not rules) have been shaped over time due to the fact that the program is new and the Department didn't know exactly what to expect or how the program would be administered by counties and tribes. There was an increase in allocations in the second year of the program. But, again, the financial aspects of the program cannot be controlled through this rule.
HFS 58.02 (2) [HFS 58.02 (3)]	We support this effective date so that we don't have to immediately obtain the new information on all open cases. (5)	No response required.
HFS 58.03 (5) [HFS 58.03 (5)]	"Completed application" definition should provide that application is complete when the relative complies with requirements specified in state law. Or require all	The Department agrees and has added language to ensure that the information required by an agency is that information required by statute or this chapter. Section 48.57 (3p) (fm) 1.,

	agencies to make provisional payments. Otherwise, a relative could wait 2-3 months before payments are received. (7, 8)	Stats., states that agencies may (but does not require them to) make provisional payments. The Department cannot, therefore, mandate such payments by rule.
HFS 58.03 (5) [HFS 58.03 (5)]	The language would still allow an agency to require more information than necessary and thus delay the beginning of the payment. (8)	The Department has revised the definition to clarify that the agency can only require information required under s. 48.57, Stats., and ch. HFS 58.
HFS 58.03 (5) and HFS 58.07 [HFS 58.03 (5) and 58.07]	Address these two sections together because they both affect the timeliness of the application processing. (8)	Section HFS 58.03 (5) is merely a definition of a term used in s. HFS 58.07. Definitions are grouped in a rule.
HFS 58.03 (5) [HFS 58.03 (5)]	If the agency does not make provisional payments and delays in submitting the information to obtain a criminal background check, the applicant is improperly and unfairly penalized. (8)	The Department has revised s. HFS 58.06 (1) (a) to reflect the comment by putting a 5-day time limit on submitting information for a background check.
HFS 58.03 (14) [HFS 58.03 (18)]	Revise to reflect different definition of "relative" for tribal communities (e.g., to include second cousins). (1)	The Department's definition adheres to the statutory language at s. 48.57 (3m) (a), Stats. The Department would consider changing the rule's definition if the statute changes.
HFS 58.04 (1) [HFS 58.04 (1)]	Specify the required application form, and information on the form should be limited to what is required by law. Agencies should not be free to develop whatever forms they deem to be appropriate. (7, 8)	The Department issued a model form that agencies are free to use or not use. The Department decided that agencies need some flexibility to include additional data on the form for their own records and to assist them in administering the program.
HFS 58.04 (1) [HFS 58.04 (1)]	The language should be changed to indicate that the form or forms should relate only to information required for determining eligibility. (7, 8)	The Department agrees with the suggestion and has revised the proposed language.
HFS 58.04 (2) [HFS 58.04 (2)]	This requirement for background checks goes beyond the provisions of state law. State law only refers to residents of the relative's home. (7)	The language proposed in s. HFS 58.04 (2) accurately reflects applicable statutory language at s. 48.57 (3p) (b) 1. and (c) 1. and 3., Stats. Therefore, the Department has not modified its proposed language.
HFS 58.04 (2) [HFS 58.04 (2)]	The statutes do not allow for criminal background checks on prospective adult residents. Add language to require relative recipients to notify the agency and provide necessary information for background checks when it is anticipated that an additional adult is going to be residing in the household. (8)	The Department has added clarifying language to address the commenter's concern. The Department's intent regarding requirements related to prospective adult residents is expressed in the language at s. HFS 58.04 (3) (c).
HFS 58.04 (2) (a) 2.	There is no statutory authority to require a relative or other adult to provide a statement regarding previous	The Department disagrees. The language in s. 48.57 (3p), Stats., speaks of a "background investigation." The statute

[HFS 58.04 (2) (a) 2.]	contacts with a child protective services agency. (7, 8)	does not restrict this background to criminal violations. In addition, the language authorizing the rule at s. 48.57 (3m) (ar), Stats., states that the Department is to provide assessment criteria. The Department's primary interest, in all cases, is to assure that the child will be free from abuse or neglect. This is, in fact, a "need" criterion under s. HFS 58.05 (1) (a) 2.
HFS 58.04 (2) (b) [HFS 58.04 (2) (b)]	This should be removed. The 2-day requirement seems unnecessarily strict and may be difficult to comply with, particularly in cases where adult family members may be present in the household for indeterminate periods of time. (8)	The Department has not changed its proposed language. The rule's language requires the 2-day notification after the person's assumption of residence in the home. This relates to the definition of "adult resident" under s. 48.57 (3p) (a), Stats., so it would not apply to someone merely visiting the home. Again, protection of the children is the Department's paramount concern.
HFS 58.04 (3) to (6) [HFS 58.04 (3) to (5) and 58.11 (1) and (2)]	Language should be added which prohibits an agency from requiring information which is not necessary for determining eligibility or which is impossible for the relative to provide. Each agency should not be allowed to establish its own standards. (8)	The Department agrees, in part, and has added proposed language that is consistent with protecting the rights of applicants and relative caregivers. The Department believes that some flexibility is necessary, however, for agencies to perform their responsibilities. If the Department set specific requirements, the requirements would most likely exceed what some agencies would wish to require.
HFS 58.04 (3) (b) [HFS 58.04 (3) (b)]	Require the relative to only provide whatever information he or she has. In some cases, the relative may not have all of the requested information. (7, 8)	The Department has changed the proposed language to reflect this reality. The forms to be used, which are currently being developed, make this clear.
HFS 58.04 (4) [HFS 58.11 (1)]	It is difficult for relatives to produce the relevant documents, both in terms of their access and the cost of obtaining them. The tribe would prefer to continue to use tribal enrollment as the criteria since these documents were required for enrollment. (9)	The proposed rule requires each agency to have a written policy on what it requires in terms of verification. The rule does not mandate the production of any specific documents. As such, the tribe can continue its current practice, as long as the practice is reduced to written policy.
HFS 58.04 (4) [HFS 58.11 (1)]	Establish standards for verification. Delegation to each agency violates rule-making requirement of s. 48.57 (3m) (ar), Stats., and raises due process and equal protection concerns. (7)	The Department believes that, within limits, agencies need the flexibility to administer the program in a manner consistent with the operation of other agency programs. Section 48.57 (3m) (ar), Stats., indicates that the rules must establish the criteria, not verification of the criteria. The requirement to have written policies alleviates concerns related to due process and equal protection.
HFS 58.04 (4) (a) and (5) (a)	Agencies are responsible to establish written policies regarding verification of relationship and residence.	The Department has proposed that agencies create written policies as an alternative to the Department specifying how the

[HFS 58.11(1) (a) and (2) (a)]	While this is not a bad concept, counties do not have the administrative funds to complete this task. (6)	relationship and residence would have to be verified. The issue of funding is beyond the scope of this rulemaking.
HFS 58.04 (4) (a) 1. [HFS 58.11 (1) (a) 1.]	This section is vague. "Normal standards" is not defined. Leaves too much discretion to local agencies. (7)	The normal standard for verification is that which is established by the required written policy. This exception will allow agencies to relax their verification requirements in most cases to facilitate the application process for relatives.
HFS 58.04 (4) (a) 1. [HFS 58.11 (1) (a) 1.]	This information need not be in writing. Verbal information from relatives, for example, should be accepted. (8)	The Department has deleted the term "written" and replaced it with a requirement that any verbal information provided to the agency be recorded in the case file.
HFS 58.04 (4) (a) 2. [HFS 58.11 (1) (a) 2.]	Agencies should be required to accept alternative forms of verification. Change "may" to "must." (7, 8)	The Department has altered the language to reflect the comment but it has left agencies some discretion regarding what alternative forms of verification will be acceptable.
HFS 58.04 (5) [HFS 58.11 (2)]	Same comments as those relating to s. 58.04 (4) (a) 1. and 2. (7, 8)	The Department has made changes similar to those it made in response to the two previous comments.
HFS 58.04 (6) [HFS 58.04 (4)]	Does the child need to graduate by age 19? What is good standing and who defines this? What if the school won't release the information? Whose burden is it to prove that the child is in good standing? (9)	Neither the rule nor the statute requires that the child graduate by age 19. The rule allows the local school to determine "good standing." Schools specify standards for determining whether a child is on course to graduate and can participate in sports or other extracurricular activities. The Department is issuing a numbered memo with a form for the purpose of determining "good standing." The relative must indicate on the form if the child is on course to graduate and the school merely signs the form, attesting to the accuracy of the assertion. The Department knows of no situation in which a school refuses to sign the form. The burden is on the relative caregiver to secure the sign-off from the school but the agency should be willing to assist if there is a problem.
HFS 58.04 (6) [HFS 58.04 (4)]	The rule must contain a provision for alternative methods of verification of school status, such as report cards, etc., for those times (i.e., summer vacation) when a statement from a school is not available. (7)	The Department agrees.
HFS 58.04 (7) [HFS 58.04 (5)]	Currently do home visits but don't like the requirement for a "home inspection." It is not defined, so expectations are not clear. Does this affect the county's liability? (3)	The requirement for a home inspection applies only to long-term kinship care cases as defined in s.48.57 (3n), Stats. The term "home inspection" is used in the statute and the Department has not defined it further.

HFS 58.04 (7) [HFS 58.04 (5)]	The situation causing the denial or termination may not be self-evident. The only way the agency will know if the situation is different is if the relative reapplies. A relative cannot be denied the opportunity to apply. The application can then be denied if the situation has not changed. (7, 8)	The department has modified what is now s. HFS 58.04 (5). The department included this language in the proposed rule to recognize that agencies have no administrative funds for this program. If an applicant is denied because a resident of the home has a criminal background that is an obstacle to the applicant receiving kinship care payments, the applicant could keep applying every week and the agency would have to process the application even though the person continued to be a resident of the home. If the application is denied or a payment is terminated, the relative must be notified pursuant to what is now s. HFS 58.08. A relative can reapply at any time.
HFS 58.05 (1) (a) 1. d. [HFS 58.10 (1) (a) 4.]	There are a number of cases where children have lived with a relative for years but are being terminated because they do not meet the stricter Kinship Care requirements. The parents are "around," but have little to do with raising their children. The rules should be clarified so that these children can remain with the relatives who have raised them – sometimes since birth. (8)	The Department's proposed language at what is now s. HFS 58.10 (1) (a) 4. is specifically intended to apply in cases such as those referenced in the comment. The Department plans to provide guidance to agencies in this area.
HFS 58.05 (1) (a) 2. [HFS 58.10 (1) (b)]	The requirement that the relative and the child be interviewed, and the documentation of those interviews, will place a financial burden on counties. The requirement should be deleted. (4, 5, 6)	The department believes that given the need to make determinations regarding the need, the best interests of the child and court jurisdiction, an interview with the relative is essential. The Department has revised the rule to remove the requirement that the child, when possible, be interviewed.
HFS 58.05 (1) (a) 3. [HFS 58.10 (1) (c)]	The standards are set by rule. Agencies cannot add standards. (7)	The Department agrees. The criteria are specified in rule. The process for determining whether the criteria are met, however, is the agency's responsibility. For example, an agency may require home visits.
HFS 58.05 (1) (a) 4. [HFS 58.10 (1) (d)]	The length of time a child has been living with a relative should be a consideration in this criterion. (8)	The Department agrees and has added language that allows this to be a consideration.
HFS 58.05 (1) (a) and (c) [HFS 58.10 (1) and (3)]	Add a section to both paragraphs to provide that "need" and "jurisdiction" are met if the child received AFDC/NLRR benefits with the relative. (7, 8)	The Department believes that eligibility for AFDC/NLRR has no connection to the need for the placement or the actual or potential court jurisdiction. See the Department's response to the comment on s. HFS 58.05 (1) (a). Therefore, it has not modified the proposed rule language.
HFS 58.05 (1)	The requirement to determine best interests of the	The requirement to determine best interests of the child is not

(b) [HFS 58.10 (2)]	child is new and will be problematic. This is not currently required. (3)	new. It is currently required and has been since the program began. It is required under s. 48.57 (3m) (am) 1., Stats.
HFS 58.05 (1) (b)	The best interests of the child would be satisfied without additional language, due to the consent of the child's parents. (8)	The Department agrees that the approval of the parents is an appropriate criterion to determine best interests.
[HFS 58.10 (2)] HFS 58.05 (1) (b) 1. b. [HFS 58.10 (2) (a) 2.]	"Reasonable effort" to contact the parent is not defined. We currently send a letter to the parent's last known address and it is unclear whether we would need to do more. (5)	The Department has revised the proposed rule to show that an attempt to contact the child's parent or parents by phone, by mail or in person would meet the requirement.
HFS 58.05 (1) (b) 1. b. [HFS 58.10 (2) (a) 2.]	These criteria fail to recognize the situation in which the child is placed with the relative by the child welfare agency without either a court order or consent of the parent through an informal disposition. (7)	An informal disposition under s. 48.245, Stats., must be entered into with the consent of the parent. In addition, informal dispositions cannot result in a residential placement. If the agency places a child without the consent of the parent, a court order is required.
HFS 58.05 (1) (b) 1. b. [HFS 58.10 (2) (a) 2.]	Do not require the approval of both parents. In custody cases, one parent may withhold approval whether or not it is in the best interests of the child. (3)	The Department has revised the rule to require the approval of just one of the child's parents.
HFS 58.05 (1) (c) [HFS 58.10 (3)]	The rule requires sufficient documentation to justify that the court jurisdiction, if sought, could exist. This would essentially require a CPS investigation. (5)	The language the Department has proposed in what is now s. HFS 58.10 (3) (a) is required under s. 48.57 (3m) (am) 2., Stats., and has been required since the program was instituted. It appears that the commenter's concern relates to what is now s. HFS 58.10 (3) (b) regarding the justification for the decision. The Department has added language at what is now s. HFS 58.10 (3) (b) 4. that provides a little more flexibility in justifying the decision. At the same time, it also creates a threshold for decision-making reflective of legislative intent in terms of the existence or potential existence of court jurisdiction.
HFS 58.05 (1) (b) [HFS 58.10 (2) (a)]	If the parents consent, the interests of families with long-term placements should be satisfied. (8)	No change. If the parent(s) agree with the living arrangement, then the length of time the child has lived with the relative is irrelevant. If the appropriate parent or parents do not agree, then child welfare issues can be presumed to exist and the case should, but is not required to, be referred to the child welfare agency. The decision to refer or not refer the case is a decision to be made by the kinship care agency.
HFS 58.05 (3) [HFS 58.15 (2)]	Language should be added to make clear that the criteria would be met in families where the relative had cared for the child for a substantial period of time. (8)	While the Department agrees with the commenter's position in terms of the need and best interests of the child, the legislature clearly intended for court jurisdiction or potential jurisdiction to

HFS 58.07 [HFS 58.06]	The issuance of benefits should not be delayed where responses to the request for criminal background information are not received in a timely fashion. Statutory authority to provide provisional benefits in such cases is clearly present. (8)	be a primary criterion for eligibility. Section 48.57 (3p) (fm), Stats., allows county agencies or the Department to make provisional payments (i.e., "...may provisionally approve..."). The department cannot create a rule that infringes on an option provided to an agency by statute.
HFS 58.07 [HFS 58.06]	If a child is placed with a relative by a child welfare agency or the court, benefits should be retroactive to the date of the placement, where that date precedes the application date. (8)	The Department has added language to what is now s. HFS 58.06 to reflect the comment.
HFS 58.07 (2) [HFS 58.06 (2)]	The retroactive payments are a problem for tribes since the allocations are already inadequate. The payments beginning on the first day of the month the application was received will add to the cost. (9)	The proposed rule requires the payment to begin effective the date the completed application was received, not the beginning of the month in which it was received. This is a compromise starting point and seems appropriate since the date of application is generally between the date the child first lived with the relative and the beginning of the month following application.
HFS 58.07 (1) and (2) [HFS 58.06 (1) and (2)]	Reduce the timeline for acting on an application to 30 days. If found eligible, retroactive payments should be provided. (7, 8)	The Department interprets s. 48.57 (3m) (f), Stats., as the intent to allow agencies 45 days to act on an application. As such, the rule cannot contradict statutes. Since financial status is not a requirement for eligibility under the Kinship Care program, the Department will not mandate when the payments must begin.
HFS 58.07 (1) (b) [HFS 58.06 (1) (b)]	This section should reinforce the idea that benefits may not be delayed for failure to provide documentation that the applicant is unable to obtain. The agency should accept the best information available and help the applicant obtain the information if necessary, after benefits are issued. (8)	Given the changes made in earlier parts of the rule, the Department does not believe that any change is necessary in this section.
HFS 58.09 [HFS 58.12]	Delete this section. Waiting lists are not authorized by state law. If an agency anticipates that funding will be exhausted, that agency should be required to notify the Department, the Department should notify DOA and request that DOA submit a request to the Joint Finance Committee for additional funds. (7, 8)	Both the Department's and the Legislative Council's legal counsel advise that waiting lists are allowed. Moreover, the use of waiting lists has been substantiated by numerous decisions on appeal to the Division of Hearings and Appeals. The Department is monitoring waiting lists and will keep the Legislature aware of any such waiting lists. Therefore, for the time being, the Department has not proposed further revisions to the rule.

<p>HFS 58.09 (2) [HFS 58.12 (4)]</p>	<p>Prohibition of placement on a waiting list if placed via court order will automatically require county funding for the cash grant. Remove this clause or provide sum sufficient funding for such court-ordered placements. (4)</p>	<p>If the court orders a child placed with a relative, with or without such a recommendation by the county agency, the county has a responsibility to provide funding for that placement. In many cases, if a relative were not available to take the child, the child would be placed by the court into foster care or some other out-of-home living arrangement. The cost is less to the county to fund a Kinship Care placement. Therefore, the Department has not revised the proposed rule language.</p>
<p>HFS 58.10 [HFS 58.13 and 58.16]</p>	<p>This requires that the agency determine at the reassessment that there is still a need for the living arrangement that it is in the child's best interest and that court jurisdiction would or could be met. Would the child also have to be re-interviewed? (5)</p>	<p>Not any more. The proposed change previously noted with respect to s. HFS 58.05 (1) (a) 2. [what is now s. HFS 58.10 (1) (b)] should resolve this concern.</p>
<p>HFS 58.11 [HFS 58.08]</p>	<p>Revise to require that appeals related to criminal background checks be individualized. (2)</p>	<p>The Department has revised the rule to include the language currently found at s. 48.57 (3p) (h) 3., Stats., so it is clear what criteria should be considered.</p>
<p>HFS 58.11 [HFS 58.08]</p>	<p>Amend section to provide that advance notice of termination of payments is required. (7, 8)</p> <p>Require that the notice of appeal rights should include information about the right to receive continuing payments as specified in s. 48.57 (3m) (g) 2., Stats. (7, 8)</p> <p>Provide in sub. (3) that the 45-day time limit does not apply if there is no notice of the agency's action. This is a basic premise of administrative law. (7, 8)</p> <p>Add a section to require a response within a set time, such as 30 days, in those cases where the denial of payments is based on criminal record and the individual requests review. (7, 8)</p>	<p>Advance notice is not required. The language regarding appeals at s. 48.57 (3m) (g) 2., Stats., is designed to protect a relative from immediate termination if the appeal is filed in a timely manner.</p> <p>The Department has changed the rule language to reflect the comment.</p> <p>An agency not providing notice is essentially the same as not taking action on the application. The language in what is now s. HFS 58.08 (3) already covers such cases.</p> <p>The Department has added language to reflect the comment.</p>
<p>HFS 58.11 (2) (a) [HFS 58.08 (2)]</p>	<p>This is a state-mandated program and all appeals should be heard by a state hearing examiner to provide statewide consistency in such appeals. (4)</p>	<p>The appeal to the county director on denials and terminations related to criminal background is required under s. 48.57 (3p) (h) 2., Stats.</p>

<p>(a) HFS 58.11 (2) (a) 2. [HFS 58.08 (2) (a) 2.]</p>	<p>The language should be changed to reflect the statutory language in terms of the considerations not being limited to those specified in the section. (8)</p>	<p>The Department agrees and has modified the proposed rule..</p>
<p>Appendix A [HFS 58.09]</p>	<p>Remove all references to this complicated and time-consuming additional requirement. (4)</p>	<p>Currently, the Department believes that this is an important exception to the cooperation requirement. Any real potential for emotional or physical harm to the relative or the child should initiate a process whereby their cooperation can be excused. In addition, the Department of Workforce Development is proposing to have the statute changed to require this good cause option in Kinship Care and other cases so the Department would have to implement it later anyway.</p>
<p>Appendix A, s. (10) (a) [HFS 58.09 (10) (a)]</p>	<p>Add a sentence at the end requiring the agency to notify the applicant that an extension can be granted. (8)</p>	<p>The Department agrees and has revised the proposed rule.</p>