

WISCONSIN LEGISLATIVE COUNCIL STAFF

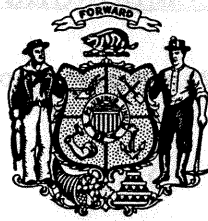
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FORM 2

MAY 10 1999

**RULES CLEARINGHOUSE**

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**CLEARINGHOUSE REPORT TO AGENCY**

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[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

**CLEARINGHOUSE RULE 99-071**

AN ORDER to create chapter HFS 58, relating to the eligibility of nonparent relatives of children to receive kinship care benefits to help them provide care and maintenance for the children.

Submitted by **DEPARTMENT OF HEALTH AND FAMILY SERVICES**

04-09-99 RECEIVED BY LEGISLATIVE COUNCIL.

05-07-99 REPORT SENT TO AGENCY.

RS:JLK:jal;kjf

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached

YES

NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached

YES

NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached

YES

NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

Comment Attached

YES

NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached

YES

NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

Comment Attached

YES

NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached

YES

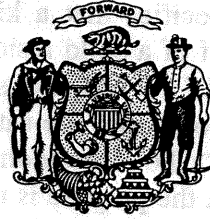
NO

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## CLEARINGHOUSE RULE 99-071

### Comments

**[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]**

#### I. Statutory Authority

a. Section HFS 58.03 (8) indicates that "kinship care" is a program under s. 48.57 (3m) (relating to kinship care) or (3n) (relating to long-term kinship care), Stats., that "provides assistance to children and families without need for full involvement of the child and family in the formal child welfare system." The subsection then specifies that in s. HFS 58.03 (8), "'formal child welfare system' means the system that assigns a case manager to a child or family and provides services pursuant to a voluntary agreement of the family or the order of a court."

There is nothing in s. 48.57 (3m) or (3n), Stats., which indicates that kinship care or long-term kinship care is a program under which there is no need for full involvement of the child or family in the formal child welfare system. Moreover, one criteria for eligibility for long-term kinship care is that the relative has been appointed as the guardian of the child under s. 48.977 (2), Stats. [see s. 48.57 (3n) (am) 1., Stats.], which presupposes that there has been extensive involvement in the formal child welfare system. Further, ch. HFS 58 clearly anticipates that some children for whom kinship care benefits are paid are under a court order [see s. HFS 58.05 (1) (c) 1. a.], that is, that the child welfare system is involved.

The issue of whether a kinship care or long-term kinship care case should have a case manager, whether services should be provided, whether permanency planning should be done, etc. (that is, the extent of the involvement in the child welfare system), is an important public policy issue for which the statutes do not provide a clear answer. Therefore, it is inappropriate

to include such a statement in ch. HFS 58, much less include such a statement in a definition which, according to s. 1.01 (7) (b), Manual, may not include substantive provisions.

b. Section HFS 58.03 (10) specifies that a kinship care payment means "a monthly payment of \$215 to a relative on behalf of a child residing with that relative for the purpose of assisting in the living costs of the child." In contrast, s. 48.57 (3m) (am) (intro.) and (3n) (am) (intro.), Stats., specify that, if certain conditions are satisfied, kinship care or long-term kinship care payments are made to a relative "who is providing care and maintenance for that child." Because the statutes do not specify that the purpose is to assist in the living costs of the child, it would be preferable to define "kinship care payment" using only terms specified in the statutes.

c. Section HFS 58.03 (14) defines the term "relative" in terms of "a child's adult stepparent, brother . . . ." The definitions of the terms "kinship care relative" and "long-term kinship care relative" contained 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 rule definition of the term "relative"? Second, what statutory authority exists to require that a kinship care relative or a long-term kinship care relative be an adult?

d. Section HFS 58.07 (1) (a) and (b) in part provide that neither a kinship care payment nor a long-term kinship care payment may be made to a relative if the relative is receiving a foster care payment under s. 48.62 (4), Stats. However, s. 48.57 (3m) (cm) and (3n) (cm), Stats., provide that a kinship care relative and a long-term kinship care relative who receive payments under the kinship care program may not receive a payment under s. 48.62 (4), Stats. What statutory authority exists for, in effect, giving priority to a foster care payment under s. 48.62 (4), Stats.?

e. 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 in accordance with the agency's written policies. Section 48.57, Stats., generally gives the department the authority to determine eligibility for kinship care payments. What statutory authority exists for delegating this responsibility to a kinship care agency?

f. If it is accepted that cooperation in the application process includes providing information about a parent for purposes of child support enforcement or providing good cause for not providing such information, then the review and fair hearing provisions in s. 48.57 (3m) (f) or (3n) (f), Stats., would apply because any denial of benefits for failure to cooperate would be based on the grounds that a condition in s. 48.57 (3m) (am) 5. or (3n) (am) 5., Stats., had not been met. In that case, s. 48.57 (3m) (f) and (3n) (f), Stats., provide that the appeal must be filed not more than **45 days** after the denial.

Section HFS 58.10 (3) (b) specifies that an appeal filed more than **10 days** after notification of a decision that there is no good cause must be denied. (Also see Appendix A (5) (f) and (11) (c) and (d).) Assuming that an appeal of the good cause denial is not pursued, Appendix A (5) (f) then provides that kinship care benefits must be denied. After a notice denying benefits is sent, a person has 45 days to appeal, as set forth in s. 48.57 (3m) (f) and (3n)

(f), Stats. However, s. HFS 58.10 (3) (a) provides that this 45-day period does not apply to an appeal "related to" a decision on a good cause claim. To be consistent with the statutes, it appears that at least 45 days must be allowed for such an appeal.

g. Section HFS 58.04 (7) provides that if an applicant is denied or a payment is terminated, the applicant or kinship care relative may not reapply for a benefit for a period of 90 days following the date of notification of the denial or termination. This means that, for example, if benefits were denied on the basis that a child does not meet or is not at risk of meeting one or more of the criteria in s. 48.13 or 938.13, Stats., and then 30 days after the denial the court exercised jurisdiction under s. 48.13 or 938.13, the relative could not apply for benefits for another 60 days. However, the person would be eligible for benefits under the statutes and there is no statutory basis for imposing this waiting period.

h. Section HFS 58.05 (1) sets forth eligibility criteria for kinship care payments, including the need of the child, best interests of the child and jurisdiction of the court. Furthermore, s. HFS 58.05 (2) specifies that an agency may not create eligibility criteria for the kinship care program in addition to the criteria set forth in s. HFS 58.04 or 58.05.

Due to the fact that the definition of kinship care in s. HFS 58.03 (8) includes the program under s. 48.57 (3n), Stats., that is, includes the long-term kinship care program, s. HFS 58.05 (1) technically applies to the long-term kinship care program. However, the eligibility criteria for long-term kinship care are set forth in s. 48.57 (3n) (am), Stats., and are different than the criteria set forth in s. HFS 58.05. Thus, s. HFS 58.05 sets forth eligibility criteria for the long-term kinship care program that are contrary to the eligibility criteria set forth in the statutes. Separate eligibility criteria must be specified for the long-term kinship care program. [Specifically, see s. HFS 58.05 (1) (a) and (c).]

Similarly, s. HFS 58.09 (1) (a) requires a reassessment every 12 months to determine if the requirements under ss. HFS 58.04 and 58.05 continue to be met. Because of the definitions of kinship care relative and kinship care program, s. HFS 58.09 (1) (a) technically applies to the long-term kinship care program. Thus, s. HFS 58.09 (1) (a) incorrectly sets forth reassessment criteria for the long-term kinship care program that are contrary to the reassessment criteria set forth in s. 48.57 (3n) (d), Stats. Likewise, s. HFS 58.09 (2) incorrectly requires that payments be discontinued for long-term kinship care based on reassessment criteria that apply to kinship care. Again, various features of the kinship care program and long-term kinship care program must be more clearly delineated in ch. HFS 58.

i. 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 they are not 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 appropriations 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 in the amount of \$215 per month to a kinship care relative who is providing care and maintenance for a child if all of 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 prior to July 1, 1997 and stated the following:

DHFS [Department of Health and Family Services (DHFS)] staff contend that, because the current statutes make a 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.

In order 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.



**2. Form, Style and Placement in Administrative Code**

- a. In s. HFS 58.03 (5), “can be made” should be changed to “may be made.” [See s. 1.01 (2), Manual.]
- b. In s. HFS 58.04 (3) (b), the phrase “would negate” should be replaced by the word “negates.”
- c. Appendix A is written and numbered as if it were a text provision. It would appear to be more appropriate, and easier to cross-reference provisions in the appendix, if Appendix A were changed to a section in ch. HFS 58.

**4. Adequacy of References to Related Statutes, Rules and Forms**

a. The third sentence of the second paragraph of the analysis should specify that it was 1997 Wisconsin Act 27 which made DHFS responsible for administration of the kinship care program in Milwaukee County effective January 1, 1998. As currently worded, the sentence implies that it was 1997 Wisconsin Act 105 which did so.

b. Section HFS 58.03 (13), defines “medical assistance” by reference to “ss. 49.43 to 49.475 and 49.49 to 49.497, Stats.” It appears that the reference should be to “ss. 49.43 to 49.499, Stats.”

c. Section HFS 58.07 (2) provides that no kinship care or long-term kinship care payments may be made if a child is receiving supplemental security income under 42 U.S.C. ss. 1381 to 1383c. However, s. 48.57 (3m) (am) 6. and (3n) (am) 5r., Stats., additionally specify that no payments may be made if a child is receiving state supplemental payments under s. 49.77, Stats. A reference to this provision should be added to s. HFS 58.07 (2).

d. In s. HFS 58.08 (2), the phrase “placed with the kinship care relative by a court under s. 48.355, 48.357 or 48.365, Stats.” should be changed to “placed with the kinship care relative by a court under s. 48.355 or 48.357, Stats.” because s. 48.365, Stats., provides for an extension of a dispositional order, but not actual placement.

In addition, the phrase “pursuant to a petition under s. 938.13, 938.355, 938.357 or 938.365, Stats.” should be changed to “pursuant to a petition under s. 938.13, Stats., or by a court under s. 938.355 or 938.357, Stats.”

e. In Appendix A (12) (b) 2. b. and c., the cross-reference “subd. par. a.” should be replaced by the cross-reference “this subd. 2. a.”

**5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. In s. HFS 58.04 (2) (a), the references to “prospective resident” should be changed to “prospective adult resident” to utilize the term defined in s. HFS 58.03 (1).

b. In s. HFS 58.04 (5) (a), the phrase "such as . . . representative" should be set off by commas.

c. 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).

d. Section HFS 58.05 (1) (b) 1. b. provides that in cases in which 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 made clear how best interests are determined if it is not possible, after making a reasonable effort, to contact the child's parent or parents.
- (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 in cases in which 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.
- (6) The second sentence should be rewritten to read: "If consent is received, the kinship living arrangement is determined to be in the best interests of the child."

e. In HFS 58.05 (1) (c) 1. (intro.), the phrase "shall make one" should be changed to "shall make at least one."

f. 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?

g. 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:".

h. Appendix A (4) (a) 1. and 2. use the phrase "harm of a serious nature" in reference to a child, while the defined term "serious nature" in sub. (1) (b) refers to a relative. Should the term "serious nature" be defined with reference to a child? Similarly, sub. (4) (a) 4. refers to emotional harm of a serious nature to a kinship care relative while the term "emotional harm" is defined in Appendix A (1) (a) with reference to a child. Should the rule include a definition of the term "emotional harm" with reference to a kinship care relative? Also, in sub. (4), the word "a" should be inserted before the phrase "serious nature."

i. In Appendix A (5) (e) (intro.), it is unclear when the 10 days is counted from. This comment also applies to Appendix A (10) (d) (intro.), (11) (c) (intro.), (12) (b) 2. b. and (13) (c) (intro.).

j. Appendix A (5) (e) 1. to 3. and (13) (c) 1. to 3. provide three alternatives if the agency determines that good cause does not exist. It is unclear why the alternative of requesting a hearing under s. HFS 58.10 is not included. (See Appendix A (10) (d) 1. to 4. for a comparison.)

k. In Appendix A (9) (a) 3., "probably" should be changed to "probable." Also, "emotional impairment" should be changed to "emotional harm" to use the term defined in Appendix A (1) (a).

l. In Appendix A (10) (d) (intro.), "may first:" should be changed to "may do any of the following:".

4-8-99

PROPOSED ORDER OF THE  
DEPARTMENT OF HEALTH AND FAMILY SERVICES  
CREATING RULES

To create chapter HFS 58, relating to the eligibility of nonparent relatives of children to receive 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 is 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 July 1, 1996 and by July 1, 1997 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 April 1998 by 1997 Wisconsin Act 105 to add sub. (3n), relating to long-term kinship care, and to make the Department responsible for administration of the kinship care program in Milwaukee County, and again 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 relative to receive the monthly kinship care payment.

These are the Department's rules for the kinship care program. The rules cover 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, under the headings of need of the child for the kinship care living arrangement, best interests of the child and jurisdictional considerations; the use of waiting lists; reassessment at least annually of a kinship care relative's eligibility; and appeal rights of an applicant who has been denied a kinship care benefit or of a kinship care relative whose benefit has been discontinued following a reassessment.

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

SECTION 1. Chapter HFS 58 is created to read:

## CHAPTER HFS 58

### ELIGIBILITY FOR THE KINSHIP CARE PROGRAM

HFS 58.01	Authority and purpose
HFS 58.02	Applicability
HFS 58.03	Definitions
HFS 58.04	Requirements for applicants and kinship care relatives
HFS 58.05	Eligibility criteria
HFS 58.06	Timeline for action on an application
HFS 58.07	Payments prohibited
HFS 58.08	Waiting list
HFS 58.09	Reassessment of eligibility
HFS 58.10	Appeal rights
Appendix A	Procedures for requesting a good cause exemption to requirement for cooperation in securing child support

**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 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 program, to the department as it administers the kinship care program 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 program.

(2) EFFECTIVE DATE. This chapter applies to all applicants for kinship care benefits who apply on or after the effective date of this chapter [revisor to insert effective date] and to kinship care relatives currently receiving a kinship care payment at the time of the first reassessment of eligibility after the effective date of this chapter [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 program for the child for whom that relative is providing or will provide care in the relative's home.

(3) "Child" means a person who is under 18 years of age.

(4) "Child support agency" has the meaning given in s. DWD 15.02(1).

(5) "Completed application" means a document that includes all of the information required by an agency to make a decision as to whether the criteria for eligibility are met and whether a finally approved or provisional payment can be made. If the agency elects, by written policy, to not make provisional payments under s. 48.57(3p)(fm), Stats., a "completed application" shall also include the information obtained in response to a criminal background check.

use defined term.

(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) "Kinship care" means the program described under s. 48.57(3m) or (3n), Stats., which provides specific assistance to children and families without need for full involvement of the child and family in the formal child welfare system. In this subsection, "formal child welfare system" means the system that assigns a case manager to a child or family and provides services pursuant to either the voluntary agreement of the family or the order of a court.

(9) "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.

(10) "Kinship care payment" or "kinship care benefit" means a monthly payment of \$215 to a relative on behalf of a child residing with that relative for the purpose of assisting in the living costs of the child.

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

(12) "Long-term kinship care" means the program described under s. 48.57(3n), Stats., where the relative has been appointed as the child's guardian under s. 48.977, Stats.

(13) "Medical assistance" means the assistance program under 42 USC 1396 and ss. 49.43 to 49.475 and 49.49 to 49.497, Stats.

(14) "Relative" means a child's adult 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 consanguinity, direct affinity or legal adoption, or the spouse of any person named in this subsection, even if the marriage is terminated by death or divorce.

added

should add  
apply to  
all?

**HFS 58.04 Requirements for applicants and kinship care relatives. (1)**

**APPLICATION.** A relative who wants to apply for kinship care payments shall apply to the appropriate county department or tribal agency, except that a resident of Milwaukee County shall apply to the department, and shall complete any form or forms required by the agency.

(2) **CRIMINAL BACKGROUND CHECK.** (a) An applicant or kinship care relative shall provide information sufficient for the agency to conduct a criminal background check on the applicant or kinship care relative, any other adult resident or prospective resident of the applicant's or kinship care relative's home and any employe or prospective employe of the applicant or kinship care relative. The applicant or kinship care relative shall also attest, in writing, that neither he nor she, nor any adult resident or prospective resident of his or her home nor any employe or prospective employe has any arrests or convictions that could adversely affect the child or the applicant's or kinship care relative's ability to care for the child. In this paragraph, "employe" means an individual employed by a 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.

regular

(b) Agencies shall conduct criminal background checks pursuant to the requirements of s. 48.57(3p), Stats.

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

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

Jo yce

(b) Complete any form required for referral of the child's parent or parents to the child support agency, except that the kinship care relative or prospective kinship care relative may claim good cause for not cooperating in accordance with the procedures under Appendix A. That claim, if approved by the agency, would negate this responsibility.

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

(4) 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:

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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 written information.

2. A statement that the agency may accept alternative forms of verification of the relationship if documents specified in the agency's written policy 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) 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.

(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, 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.

(5) 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 is required.

(b) 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.

(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, 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.

(6) **INSPECTION OF THE HOME.** If the applicant is applying for a long-term kinship care payment, the agency shall inspect the applicant's home to determine if long-term placement with the relative is in the best interests of the child.

(7) **REAPPLICATION FOLLOWING DENIAL OR TERMINATION OF BENEFITS.** If an applicant is denied a payment or a kinship care relative's payment is terminated, the applicant or kinship care relative, subject to any appeal of the decision, may not reapply for a kinship care or long-term kinship care benefit for a period of 90 days following the date of notification of the denial or termination.

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**HFS 58.05 Eligibility criteria.** (1) **DETERMINATION.** Before approving an application for a kinship care payment, an agency shall determine that all of the following criteria are met:

(a) *Need of the child.* 1. 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:

a. That 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.

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

c. That 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.

d. That 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.

2. In making a determination that one or more of the criteria in subd. 1. are met, the agency shall personally interview the prospective kinship care relative and, when possible, personally interview the child, if the child is old enough to communicate his or her needs, or, if the child is not old enough to communicate his or her needs, the agency shall observe the child.

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

policy on  
documentation

4. 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.



(b) *Best interests of the child.* 1. 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:

a. 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., or a tribal court in a matter related to a child in need of protection or services, the agency may assume that the placement is in the best interests of the child and shall maintain a copy of the court order in the kinship care relative's case record.

b. 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 the child's parent or parents to determine that he or she or they are aware of and have consented to the living arrangement. That consent shall determine best interests. If the applicant is applying for a long-term kinship care payment, the agency shall interview the applicant to determine if long-term placement is in the best interests of the child.

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2. 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 subd. 1.a. or a narrative summary of the determination under subd. 1.b.

(c) *Jurisdiction of the court.* 1. The child is or could potentially be subject to the jurisdiction of the court. The agency shall make one of the following findings:

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a. 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.

b. 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.

c. 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.

2. A finding under subd. 1. 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:

a. That a similar determination has been made with regard to the child or a sibling of the child within the past 12 months.

b. 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.

c. 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.

3. 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 subd. 1.b. or c.

(2) **ADDITIONAL CRITERIA PROHIBITED.** An agency may not create criteria for eligibility for the kinship care program that are in addition to the criteria set out in s. HFS 58.04 or this section.

(3) **LONG-TERM KINSHIP CARE AGREEMENT.** 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 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 58.08(1)(a), to make a monthly kinship care payment to the relative until the earliest of the following:

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(a) The date on which the child attains the age of 18 years.

(b) The date on which the child dies.

(c) 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.

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

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

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

**HFS 58.06 Timeline for action on an application.** (1) An agency shall approve or deny an application for a 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 payment will begin following approval of an application, but the written policy shall provide for the payment to begin no later than the first day of the month beginning after the application is approved unless the applicant is placed on a waiting list under s. HFS 58.08.

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**HFS 58.07 Payments prohibited. (1) WHEN RELATIVE IS RECEIVING FOSTER CARE PAYMENT OR ANOTHER TYPE OF KINSHIP CARE PAYMENT.**

(a) A kinship care payment under s. 48.57(3m)(am), Stats., may not be made to a child's relative if the relative is receiving a foster care payment under s. 48.62(4), Stats., or a long-term kinship care payment under s. 48.57(3n), Stats., on behalf of the child.

(b) A long-term kinship care payment may not be made to a relative if the relative is receiving a foster care payment under s. 48.62(4), Stats., or a kinship care payment under s. 48.57(3m), Stats., on behalf of the 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.

**HFS 58.08 Waiting list. (1) CRITERIA. (a)** An agency may place an approved applicant on a waiting list if the agency has expended its kinship care benefit allocation for the calendar year or has established a caseload which will result in the agency expending its kinship care benefit allocation by the end of the calendar year.

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

1. The lack of stability in the living arrangement if a payment is not made.
2. The order in which the applications are received.
3. The level or urgency of the child's need under s. HFS 58.05(1)(a).
4. If the child is under guardianship of the kinship care applicant.

(c) 1. When financial resources allow an approved 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.

2. An approved applicant who is moved off of a waiting list 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.

(2) WHEN PLACEMENT ON WAITING LIST IS PROHIBITED. An approved 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 48.365, Stats., or, pursuant to a petition under s. 938.13, 938.355, 938.357 or

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938.365, Stats., or by a tribal court in a matter related to the child's need for protection or services.

**HFS 58.09 Reassessment of eligibility.** (1) **FREQUENCY OF REASSESSMENT.** (a) 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 58.05 continue to be met.

(b) 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 58.05(3) has occurred.

(2) **EFFECT OF REASSESSMENT.** If an agency determines through the reassessment process that the requirements under ss. HFS 58.04 and 58.05 are not met or through the review process that one or more of the circumstances under s. HFS 58.05(3) have occurred, the agency shall discontinue making kinship care payments to the relative.

**HFS 58.10 Appeal rights.** (1) **NOTICE.** If an agency denies approval to an applicant for a kinship care payment, discontinues a kinship care payment or denies a good cause claim under appendix A, the agency shall notify the applicant or kinship care relative in writing of its decision and the reasons for it, and shall include in the notice information about the applicant's or kinship care relative's right to appeal that decision under sub. (2).

(2) **APPEAL AGENCY.** (a) If an application is denied or a payment is terminated as the result of a negative criminal background of the applicant or kinship care relative, another adult resident of the applicant's or kinship care relative's home or an employe of the applicant or kinship care relative, the applicant or kinship care relative may appeal that decision to the director of the county department, the director of the department's bureau of Milwaukee child welfare or a person designated by the governing body of the American Indian tribe or band, whichever is applicable.

(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 appendix A, the applicant or 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.

(3) **TIMING OF APPEALS.** (a) An appeal made under sub. (2), except an appeal related to a decision on a good cause claim under appendix A, 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 30

day period under s. HFS 58.06(1). An appeal shall be considered filed if received by the division of hearings and appeals not more than 45 days after the date of notification of the decision to deny or terminate a kinship care payment. An appeal filed more than 45 days after that date shall be denied.

(b) An appeal under sub. (2)(b) related to a decision on a good cause claim under appendix A shall be filed not more than 10 days after the date of notification of the decision. An appeal filed more than 10 days after notification of the decision under appendix A shall be denied.

**APPENDIX A**  
**PROCEDURES FOR REQUESTING AN EXEMPTION**  
**FOR GOOD CAUSE TO THE REQUIREMENT FOR COOPERATION**  
**IN SECURING CHILD SUPPORT**

[See s. HFS 58.04(3)(b)]

(1) **DEFINITIONS.** In this appendix:

(a) “Emotional harm” means, in reference to a child, that the child is so emotionally impaired that his or her functioning is substantially affected.

(b) “Serious nature” means, 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) **RIGHT TO REQUEST GOOD CAUSE EXEMPTION.** An applicant or 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 benefits.

2. The notice shall describe the right to refuse to cooperate for good cause in securing child support. This shall include advising the applicant or 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 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 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).

2. The notice shall be signed and dated by the applicant or kinship care relative and the kinship care agency worker. The original shall be placed in the applicant’s or kinship care relative’s case record and the applicant or kinship care relative shall be given a copy.

3. The child support agency shall ask each applicant for kinship care benefits or the 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 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 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 applicant or relative.

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

4. The original signed claim form shall be placed in the applicant's or kinship care relative's case record and the applicant or 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, 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 relative to establish good cause circumstance.* An applicant or 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.

(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 relative. An exemption may be granted only for any of the following reasons:

(a) The 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.
2. Emotional harm of a serious nature to the child for whom the benefit is sought.

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3. Physical harm of a serious nature to the kinship care relative with whom the child is living.

4. Emotional harm of serious nature to the kinship care relative with whom the child is living.

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(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 or not 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 relative to refuse to cooperate in securing child support. That period may be extended by the kinship care agency upon written notice to the applicant or kinship care relative if it is documented in the applicant's or kinship care relative's case record 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 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 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 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.

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(d) Written notice of the final determination shall be given to the applicant or kinship care relative, including the right to a hearing under s. HFS 58.10, and to the child support agency.

(e) If the kinship care agency determines that good cause does not exist, the applicant or kinship care relative shall be notified and have 10 days 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.

(f) When the 10 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 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 PAYMENT. (a) If the applicant or 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 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 relative.

(d) Medical records which indicate the emotional health history and present emotional health status of the applicant or 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 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 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 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 probably<sup>e</sup> duration of the emotional impairment.
4. Degree of cooperation to be required.

5. Extent of involvement of the child 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 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 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 relative. The applicant or 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 relative that additional evidence is required and specify that evidence.
2. Advise the applicant or 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 relative without assistance.

(d) If after having been notified that additional evidence is required, the applicant or 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 relative that if no further action is taken within 10 days, good cause will not be found and that the applicant or kinship care relative may first:

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 58.10.

(e) When the 10 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 relative's statement and the investigation satisfy the kinship care agency that the applicant or kinship care relative has good cause.

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(b) The kinship care agency may also investigate any good cause claim when the applicant's or 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 relative in writing of the intention to do so. The applicant or kinship care relative shall have a 10-day period 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 10 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 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 relative, can be reasonably anticipated to result in physical or emotional harm to the child or the kinship care relative.

2. a. Advise the child support agency to proceed without the participation of the applicant or 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 relative.

b. The kinship care agency shall notify the applicant or kinship care relative immediately of its intended recommendation to the child support agency under subd. par. a., but shall wait for 10 days to notify the child support agency in order to give the applicant or 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. par. 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 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 relative.

2. Wait 10 days before taking further action. If after the 10 days, the applicant or 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 relative, in writing, of the right to a hearing under s. HFS 58.10. 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 58.09 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 relative, in writing, of this and of the right to a hearing under s. HFS 58.10, but shall not notify the child support agency for 10 days to allow the applicant or 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.

(d) When the 10 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 relative of the right to a hearing under s. HFS 58.10.

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:

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Joseph Leean  
Secretary

SEAL: