(Insert 6-12)

, denial or discontinuation (use twice)

Section #. 48.57 (3m) (f) of the statutes is amended to read:

within 45 days after receipt of a completed application

, 5m.,

48.57 **(3m)** (f) Any person whose application for payments under par. (am) is ~~promptly~~ or is denied on the grounds that a condition specified in par. (am) 1., ~~2.,~~ 5. or 6. has not been met and any person whose payments under par. (am) are discontinued under par. (d) may petition the department under par. (g) for a review of that ~~action or~~ failure to act. Review is unavailable if the ~~action or~~ failure to act arose more than 45 days before submission of the petition for review.

History: 1977 c. 29; 1977 c. 83 s. 26; 1977 c. 271, 354, 418, 447, 449; 1979 c. 34, 221; 1981 c. 329; 1983 a. 189 s. 329 (17); 1983 a. 447; 1985 a. 176; 1987 a. 339; 1993 a. 385, 395, 446, 491; 1995 a. 27 ss. 2575 to 2579m, 9126 (19); 1995 a. 77, 289, 443; 1997 a. 3, 27, 35, 36, 41, 105, 237, 252, 292; 1999 a. 9, 103, 133, 162; 2001 a. 16 ss. 1629, 4036–4038, 4040, 4042, 4043; 2001 a. 38, 59, 69, 109.

(end insert)

Insert 9-11

, denial, or discontinuation

12

Section #. 48.57 (3n) (f) of the statutes is amended to read:

within 45 days after receipt of a completed application

48.57 **(3n)** (f) Any person whose application for payments under par. (am) is not acted on ~~promptly~~, or is denied on the grounds that a condition specified in par. (am) 1., 2., 5., 5m., or 5r. has not been met and any person whose payments under par. (am) are discontinued under par. (d) may petition the department under par. (g) for a review of that ~~action or~~ failure to act. Review is unavailable if the ~~action or~~ failure to act arose more than 45 days before submission of the petition for review.

History: 1977 c. 29; 1977 c. 83 s. 26; 1977 c. 271, 354, 418, 447, 449; 1979 c. 34, 221; 1981 c. 329; 1983 a. 189 s. 329 (17); 1983 a. 447; 1985 a. 176; 1987 a. 339; 1993 a. 385, 395, 446, 491; 1995 a. 27 ss. 2575 to 2579m, 9126 (19); 1995 a. 77, 289, 443; 1997 a. 3, 27, 35, 36, 41, 105, 237, 252, 292; 1999 a. 9, 103, 133, 162; 2001 a. 16 ss. 1629, 4036–4038, 4040, 4042, 4043; 2001 a. 38, 59, 69, 109.

(end of text)

[Insert 13-10]

Section #. 48.57 (3p) (fm) 1. of the statutes is amended to read:

arrest and

48.57 **(3p)** (fm) 1. The county department or, in a county having a population of 500,000 or more, the department of health and family services may provisionally approve the making of payments under sub. (3m) based on the applicant's statement under sub. (3m) (am) 4m. The county department or department of health and family services may not finally approve the making of payments under sub. (3m) unless the county department or department of health and family services receives information from the department of justice indicating that the conviction record of the applicant under ~~the law of this state is satisfactory according to the criteria specified in par. (g) 1. to 3.~~ payment is approved under par. (h) 4. The county department or department of health and family services may make payments under sub. (3m) conditioned on the receipt of information from the federal bureau of investigation indicating that the person's conviction record under the law of any other state or under federal law ~~is satisfactory according to the criteria specified in par. (g) 1. to 3.~~

History: 1977 c. 29; 1977 c. 83 s. 26; 1977 c. 271, 354, 418, 447, 449; 1979 c. 34, 221; 1981 c. 329; 1983 a. 189 s. 329 (17); 1983 a. 447; 1985 a. 176; 1987 a. 339; 1993 a. 385, 395, 446, 491; 1995 a. 27 ss. 2575 to 2579m, 9126 (19); 1995 a. 77, 289, 443; 1997 a. 3, 27, 35, 36, 41, 105, 237, 252, 292; 1999 a. 9, 103, 133, 162; 2001 a. 16 ss. 1629, 4036–4038, 4040, 4042, 4043; 2001 a. 38, 59, 69, 109.

does not include any arrest for which a criminal charge is pending or conviction that could adversely affect the child or the ability of the applicant to care for the child

(cond'd on next)

Insert 16-8

Section #. 48.57 (3p) (h) 3. b. of the statutes is amended to read:

petitioner

conviction

use twice

48.57 (3p) (h) 3. 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.

History: 1977 c. 29; 1977 c. 83 s. 26; 1977 c. 271, 354, 418, 447, 449; 1979 c. 34, 221; 1981 c. 329; 1983 a. 189 s. 329 (17); 1983 a. 447; 1985 a. 176; 1987 a. 339; 1993 a. 385, 395, 446, 491; 1995 a. 27 ss. 2575 to 2579m, 9126 (19); 1995 a. 77, 289, 443; 1997 a. 3, 27, 35, 36, 41, 105, 237, 252, 292; 1999 a. 9, 103, 133, 162; 2001 a. 16 ss. 1629, 4036–4038, 4040, 4042, 4043; 2001 a. 38, 59, 69, 109.

(end insert)

Grant 18-11

Section #. 48.57 (3t) of the statutes is amended to read:

(3n) and (3p)

48.57 **(3t)** Notwithstanding subs. (3m), (3n) and (3p), the department may enter into an agreement with the governing body of a federally recognized American Indian tribe or band to allow that governing body to administer the program under subs. (3m), (3n) and (3p) within the boundaries of that reservation. Any agreement under this subsection relating to the administration of the program under sub. (3m) ~~shall specify the person with whom a request for review under sub. (3p) (h) 2. may be filed and the person who has been designated by the governing body to conduct the review under sub. (3p) (h) 3. and make the determination under sub. (3p) (h) 4. Any agreement under this subsection relating to the administration of the program under sub. (3n)~~ shall specify who is to make any determination as to whether a conviction record is satisfactory.

strike

History: 1977 c. 29; 1977 c. 83 s. 26; 1977 c. 271, 354, 418, 447, 449; 1979 c. 34, 221; 1981 c. 329; 1983 a. 189 s. 329 (17); 1983 a. 447; 1985 a. 176; 1987 a. 339; 1993 a. 385, 395, 446, 491; 1995 a. 27 ss. 2575 to 2579m, 9126 (19); 1995 a. 77, 289, 443; 1997 a. 3, 27, 35, 36, 41, 105, 237, 252, 292; 1999 a. 9, 103, 133, 162; 2001 a. 16 ss. 1629, 4036–4038, 4040, 4042, 4043; 2001 a. 38, 59, 69, 109.

an arrest

Cool almost)

(insert 21-25)

The authority granted under this health services consent form shall remain in effect until .... (print date), unless revoked or made invalid earlier. (The parent may specify any date agreed to between the parent and caregiver up to one year after the date on which the form is signed.)

Signature of parent .... Date ....

(print) Name of parent ....

(center All caps)

STATEMENT OF CAREGIVER

I understand that .... (name of parent) has authorized me to make health services decisions for .... (name of child).

(left just)

copy

Spanish, and other languages spoken by a significant number of state residents, as determined by the department. The department shall make the medical services consent form available at no charge on the Internet. The medical services consent form prepared by the department shall be in the following form:

MEDICAL SERVICES CONSENT

Use of form: Use of this form is voluntary, but completion will aid caregivers in ensuring that appropriate and timely health care is provided. The form is to be completed by the parent of a child who is being cared for by another adult.

Instructions: If additional space is needed, attach a separate sheet or use reverse side of this form.

Name - Parent (Last, First, MI)

Name - Child (Last, First, MI)Birthdate - Child (mm/dd/yyyy)

Name - Caregiver (Last, First, MI)

I hereby give consent to my child's caregiver to do the following:

A. Routine Medical Services Consent and Exclusions

For purposes of routine medical services for the above–named child, provide routine medical services, including medical and dental examinations and nonemergency prescribed treatments (e.g., tooth repair, immunizations, medications), with the following exceptions: (If there are no exceptions, write "none".)

text: text .....
text: text ..... } keep together

B. Emergency Medical Services Consent and Exclusions

In case of a medical emergency involving the above named child, arrange for emergency medical services using the following procedures:

Insert 22-8

Signature of caregiver .... Date ....

AMENDS (Center)

CONTACT INFORMATION

(B)
A. Parent

~~Name~~

(print) Name ....

Home address .... Home telephone number ....

Work address .... Work telephone number ....

Other address (specify) Other telephone number ....

(B)
B. Caregiver

(print) Name ....

Home address .... Home telephone number ....

Work address .... Work telephone number ....

Other address (specify) .... Other telephone number ....

(and of mail)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–2081/P2dn
GMM...

Date

receipt of a completed

Anne:

You will need to review this draft carefully inasmuch as it contains numerous technical drafting changes to the WLCS draft. In particular, please note all of the following:

1. The draft conforms s. 48.57 (3m) (f) to s. 48.57 (3m) (d) 1., as created by the draft, by supplying a cross–reference to s. 48.57 (3m) (a) 5m. in s. 48.57 (3m) (f) so that a person may appeal a denial of kinship care payments on the ground that the person is already receiving long–term kinship care payments. The draft also deletes "promptly" in s. 48.57 (3m) (f) and (3n) (f) and substitutes "within 45 days after the application" to conform those provisions to DHFS rules and to substitute specificity for vagueness in the statutes.

2. In s. 48.57 (3m) (am) 4. and 4m., the standard for denying kinship care payments based on arrest or conviction record is that the arrest or conviction could adversely affect the child or the relative's ability to care for the child. Section 48.57 (3m) (d) 2., as created by the draft, and s. 48.57 (3m) (fm) 1. and 2. and (h) 1., however, refer to the applicant's conviction record being satisfactory under par. (g) 1. to 3. That reference is incorrect because it implies that the only grounds for denying kinship care payments and for appealing such a denial is a conviction listed in par. (g) 1. to 3. when, in fact, many other arrests or convictions could be the grounds for denial of kinship care payments and for a consequent appeal. Accordingly, this bill deletes those incorrect references to s. 48.57 (3p) (g) 1. to 3. and substitutes therefor "an arrest for which a charge is pending or a conviction that could adversely affect the child or the relative's ability to care for the child."

3. In s. 48.57 (3m) (d) 3. and (g) 2. and (3n) (d) 2. and (g) 2. of the WLCS draft, a person whose payments are to be discontinued may continue to receive payments if the person appeals within 10 days after receiving notice of the discontinuation or before the discontinuation, whichever is later. Notice of discontinuation, however, must be provided at least 10 days before the discontinuation. As such, the date of discontinuation will *always* be later than 10 days after the notice. Accordingly, this draft deletes the reference to appealing within 10 days after the notice and simply requires the appeal to be filed before the discontinuation of the payments.

4. Section 48.57 (3p) (fm) 1., 1m., 2., and 2m. under current law are a complete mess. This draft eliminates excess and unnecessary language in those provisions in an effort to make those provisions somewhat readable.

5. Section 48.57 (3p) (fm) 1. and 2m., (h) 3. (intro.) and b., and (hm) include references to "kinship care relative" or "long–term kinship care relative." Those terms, however, are defined terms only in s. 48.57 (3m) and (3n) and not in s. 48.57 (3p). Accordingly, this draft eliminates those undefined terms and instead refers to "a person receiving payments under sub. (3m)" (or "(3n)", if applicable).

6. Section 48.57 (3t), which permits tribes to administer kinship care, contains cross–references to s. 48.57 (3p) (h) 2., 3., and 4. The draft, however, amends s. 48.57 (3p) (h) 2., 3., and 4. to delete references to tribes in those provisions. Accordingly, this draft deletes the cross–references to s. 48.57 (3p) (h) 2., 3., and 4. in s. 48.57 (3t).

7. With respect to the medical consent form, this draft deletes "medical" and substitutes "health" throughout because "medical" could be construed narrowly to include only the services of a doctor of medicine or, as defined in the bill, a dentist when, in fact, there are numerous health care providers that are not medical doctors or dentists, for example, chiropractors, psychologists, Christian Science practitioners, physical therapists, occupational therapists, optometrists, and acupuncturists. See s. 155.01 (7).

Also, the draft reorganizes the form a little bit by placing all legal material, specifically, the effective period of the consent, above the signatures and all nonlegal material, specifically, the parent and caregiver contact information below. In addition, the draft requires the parent to fill in the termination date of the authorization in all cases rather than permitting the parent to leave the date blank and letting the default period of one year kick in. Signing a legal document with blank spaces in it is never a good idea.

Finally, the draft includes in the penalty provision attempting to provide consent after the consent form has been revoked. See s. 155.80 (5). Indeed, it appears that certain other provisions of the ~~Power of Attorney for Health Care Law~~, such as s. 155.50 (1) (b) and (e) and 155.80 (1), (2), and (4) should apply with equal force to the medical consent form created under the draft.

If you have any questions about the draft or would like to discuss any of the changes made by the draft, please do not hesitate to contact me directly at the phone number or e–mail address listed below.

Gordon M. Malaise
Senior Legislative Attorney
Phone: (608) 266–9738
E–mail: gordon.malaise@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–2081/P2dn
GMM:kjf:jf

March 3, 2003

Anne:

You will need to review this draft carefully inasmuch as it contains numerous technical drafting changes to the WLCS draft. In particular, please note all of the following:

1. The draft conforms s. 48.57 (3m) (f) to s. 48.57 (3m) (d) 1., as created by the draft, by supplying a cross–reference to s. 48.57 (3m) (a) 5m. in s. 48.57 (3m) (f) so that a person may appeal a denial of kinship care payments on the ground that the person is already receiving long–term kinship care payments. The draft also deletes "promptly" in s. 48.57 (3m) (f) and (3n) (f) and substitutes "within 45 days after receipt of a completed application" to conform those provisions to DHFS rules and to substitute specificity for vagueness in the statutes.

2. In s. 48.57 (3m) (am) 4. and 4m., the standard for denying kinship care payments based on arrest or conviction record is that the arrest or conviction could adversely affect the child or the relative's ability to care for the child. Section 48.57 (3m) (d) 2., as created by the draft, and s. 48.57 (3p) (fm) 1. and 2. and (h) 1., however, refer to the applicant's conviction record being satisfactory under par. (g) 1. to 3. That reference is incorrect because it implies that the only grounds for denying kinship care payments and for appealing such a denial is a conviction listed in par. (g) 1. to 3. when, in fact, many other arrests or convictions could be the grounds for denial of kinship care payments and for a consequent appeal. Accordingly, this bill deletes those incorrect references to s. 48.57 (3p) (g) 1. to 3. and substitutes therefor "an arrest for which a charge is pending or a conviction that could adversely affect the child or the relative's ability to care for the child."

3. In s. 48.57 (3m) (d) 3. and (g) 2. and (3n) (d) 2. and (g) 2. of the WLCS draft, a person whose payments are to be discontinued may continue to receive payments if the person appeals within 10 days after receiving notice of the discontinuation or before the discontinuation, whichever is later. Notice of discontinuation, however, must be provided at least 10 days before the discontinuation. As such, the date of discontinuation will *always* be later than 10 days after the notice. Accordingly, this draft deletes the reference to appealing within 10 days after the notice and simply requires the appeal to be filed before the discontinuation of the payments.

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7. With respect to the medical consent form, this draft deletes "medical" and substitutes "health" throughout because "medical" could be construed narrowly to include only the services of a doctor of medicine or, as defined in the bill, a dentist when, in fact, there are numerous health care providers that are not medical doctors or dentists, for example, chiropractors, psychologists, Christian Science practitioners, physical therapists, occupational therapists, optometrists, and acupuncturists. See s. 155.01 (7).

Also, the draft reorganizes the form a little bit by placing all legal material, specifically, the effective period of the consent, above the signatures and all nonlegal material, specifically, the parent and caregiver contact information below. In addition, the draft requires the parent to fill in the termination date of the authorization in all cases rather than permitting the parent to leave the date blank and letting the default period of one year kick in. Signing a legal document with blank spaces in it is never a good idea.

Finally, the draft includes in the penalty provision attempting to provide consent after the consent form has been revoked. See s. 155.80 (5). Indeed, it appears that certain other provisions of the power of attorney for health care law, such as s. 155.50 (1) (b) and (e) and 155.80 (1), (2), and (4) should apply with equal force to the medical consent form created under the draft.

If you have any questions about the draft or would like to discuss any of the changes made by the draft, please do not hesitate to contact me directly at the phone number or e–mail address listed below.

Gordon M. Malaise
Senior Legislative Attorney
Phone: (608) 266–9738
E–mail: gordon.malaise@legis.state.wi.us

Malaise, Gordon

From: Sappenfield, Anne
Sent: Monday, March 17, 2003 11:47 AM
To: Malaise, Gordon
Subject: RE: Relative Caregivers

The committee won't be meeting again, so I can raise that issue with committee chairs after it's introduced. Thanks!

Anne

-----Original Message-----
From: Malaise, Gordon
Sent: Monday, March 17, 2003 11:38 AM
To: Sappenfield, Anne
Subject: Relative Caregivers

Anne:

I got your phone message that LRB-2081/P2 look OK. To put it in introducible form I will need to redraft it (with no changes) as a /1.

In my drafter's note I raised the issues of whether the committee might want immunity provisions comparable to s. 155.50 (1) (b) and (e) and penalty provisions comparable to s. 155.80 (1), (2), and (4). If after discussion the committee wants any or all of those provisions, they can be added in a final draft.

Gordon

State of Wisconsin
2003 – 2004 LEGISLATURE

LRB–2081/P2
GMM:kjf:jf

OK – No change

PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

Regen

AN ACT ***to repeal*** 48.57 (3p) (h) 5.; ***to renumber*** 48.57 (3m) (am) 2.; ***to renumber and amend*** 48.57 (3m) (am) 1., 48.57 (3m) (d), 48.57 (3n) (d) and 49.155 (5); ***to amend*** 48.57 (3m) (am) 4. and 4m., 48.57 (3m) (f), 48.57 (3m) (g) 2., 48.57 (3n) (am) 4. and 4m., 48.57 (3n) (f), 48.57 (3n) (g) 2., 48.57 (3p) (d), 48.57 (3p) (e) 4., 48.57 (3p) (fm) 1., 48.57 (3p) (fm) 1m., 48.57 (3p) (fm) 2., 48.57 (3p) (fm) 2m., 48.57 (3p) (g) (intro.), 48.57 (3p) (h) 1., 48.57 (3p) (h) 3., 48.57 (3p) (hm), 48.57 (3t) and 880.08 (3) (am) (intro.); ***to repeal and recreate*** 48.57 (3p) (h) 2. and 48.57 (3p) (h) 4.; and ***to create*** 48.57 (3m) (am) 1. b., 48.57 (3m) (d) 1., 2. and 3., 48.57 (3n) (d) 1. and 2., 48.57 (3r), 48.979 and 49.155 (5) (c) and (d) of the statutes; **relating to:** kinship care, notice of guardianship proceedings, creating a health services consent form, requesting the Joint Legislative

Council to study guardianship and legal custody, granting rule–making authority, and providing penalties.

Analysis by the Legislative Reference Bureau

This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint Legislative Council's Special Committee on Relative Caregivers. The special committee was directed to study: (1) current law relating to relative caregivers under the Children's Code and under current law relating to guardianship and kinship care; (2) relatives who care for children under an informal agreement between the child's parent and the relative and whether such relatives should be granted decision–making authority with respect to the child's care; and (3) third–party visitation law and enforcement of third–party visitation orders.

The bill does the following:

1. Makes the following changes to current law relating to kinship care:

• Modifies the eligibility criteria so that a child does not need to be a child or juvenile in need of protection or services (CHIPS or JIPS) in order for a kinship care relative to receive payments. In addition, a county department of human services or social services (county department) or, in Milwaukee County, the department of health and family services (DHFS) must find, for purposes of determining eligibility for kinship care payments, that a child needs to be placed with the relative if the child is CHIPS or JIPS or if the child has lived with the relative for 2 years or longer and the placement is voluntary and appropriate.

• Limits the arrests that a county department or DHFS may consider in conducting a criminal background check for purposes of determining eligibility for kinship care payments to arrests for which a criminal charge is pending.

• Requires a county department or DHFS to provide notice of discontinuation of kinship care payments to a relative at least 10 days before the payments are to be discontinued along with notice of the relative's rights to appeal the discontinuation and to continue receiving payments pending a hearing on the appeal of the discontinuation decision.

• Provides that a kinship care relative who receives notice that his or her payments are being discontinued may continue receiving payments pending a hearing on the appeal of the discontinuation decision if the relative requests a hearing before the payments are discontinued.

• Requires a county department or DHFS to determine that a kinship care relative's conviction record is likely to adversely affect the child or the relative's ability

to care for the child in order to deny payments on the basis of the conviction record. This change also applies to conviction records of employees of the relative who would have regular contact with the child and adult residents of the relative's home.

• Requires DHFS to provide applicants who are denied kinship care payments on the basis of a conviction record the right to a fair hearing to appeal the denial.

• Prohibits the department of workforce development from requiring a kinship care relative to pay a copayment for child care subsidies received on behalf of a child for whom the relative is receiving kinship care payments.

• Permits DHFS to request supplemental funding for kinship care payments if funding for kinship care payments is insufficient.

• Requires DHFS to study methods to manage funding for kinship care payments in order to minimize the need for waiting lists for those payments and to report the results of its study to the legislature by June 30, 2004.

2. Creates a health services consent form that parents may use to transfer decision–making authority for routine and emergency health services to an adult with whom a child lives.

3. Requires notice of a hearing to appoint a guardian to be published as a class 1 notice (i.e., published once) instead of as a class 3 notice (i.e., published 3 times), if personal service is not possible.

4. Requests the joint legislative council to study state laws regarding guardianship and legal custody of minors and the rights and responsibilities of guardians and legal custodians.

SECTION 1. 48.57 (3m) (am) 1. of the statutes is renumbered 48.57 (3m) (am) 1. (intro.) and amended to read:

48.57 **(3m)** (am) 1. (intro.) The kinship care relative applies to the county department or department for payments under this subsection and the county department or department determines that there is a need for the child to be placed with the kinship care relative and that the placement with the kinship care relative is in the best interests of the child. The county department or department shall determine that there is a need for the child to be placed with the kinship care relative if any of the following conditions is met:

SECTION 2. 48.57 (3m) (am) 1. b. of the statutes is created to read:

48.57 **(3m)** (am) 1. b. The child has been living with the kinship care relative for 2 years or longer, and the county department or department determines that the child's parents have consented to the living arrangement and that the living arrangement is not contrary to the health, safety, or welfare of the child.

SECTION 3. 48.57 (3m) (am) 2. of the statutes is renumbered 48.57 (3m) (am) 1. a.

NOTE: Under current law, one of the criteria required for receipt of kinship care payments is a finding that the child in the relative's care is a child or juvenile in need of protection or services (CHIPS or JIPS) or would be at risk of being CHIPS or JIPS if the child were to remain in the child's home. SECTION 3 eliminates that requirement for kinship care payment eligibility. Also, under current law, a county department of human services or social services (county department) or, in Milwaukee County, the department of health and family services (DHFS), must find that there is a need for the child to be placed with the kinship care relative and that placement with the relative is in the best interests of the child in order for a relative to receive kinship care payments. SECTIONS 1 and 3 require a county department or DHFS to find that a child meets the eligibility requirement that there is a need for the child to be placed with the kinship care relative if the county department or DHFS determines that the child is CHIPS or JIPS or would be at risk of being CHIPS or JIPS if the child were to remain in the child's home.

Also, under SECTION 2, if a child has been living with a relative for 2 years or longer and the county department or DHFS determines that the child's parents have consented to the living arrangement and that the living arrangement is not contrary to the child's health, safety, or welfare, the county department or DHFS must find that there is a need for the child to be placed with the relative.

SECTION 4. 48.57 (3m) (am) 4. and 4m. of the statutes are amended to read:

48.57 **(3m)** (am) 4. The county department or department conducts a background investigation under sub. (3p) of the kinship care relative, any employee and prospective employee of the kinship care relative who has or would have regular contact with the child for whom the payments would be made, and any other adult resident of the kinship care relative's home to determine if the kinship care relative, employee, prospective employee, or adult resident has any arrests for which a criminal charge is pending or convictions that could adversely affect the child or the kinship care relative's ability to care for the child.

4m. Subject to sub. (3p) (fm) 1. and 2., the kinship care relative states that he or she does not have any arrests for which a criminal charge is pending or convictions that could adversely affect the child or the kinship care relative's ability to care for the child and that no adult resident, as defined in sub. (3p) (a), and no employee or prospective employee of the kinship care relative who would have regular contact

with the child has any arrests for which a criminal charge is pending or convictions that could adversely affect the child or the kinship care relative's ability to care for the child.

NOTE: Under current law, a county department or, in Milwaukee County, DHFS must conduct a criminal background check to determine whether an applicant for kinship care payments, an employee of the applicant who would have regular contact with the child, or an adult resident of the applicant's home has any arrests or convictions that could adversely affect the child or the applicant's ability to care for the child. In addition, to be eligible for kinship care payments, an applicant must state that none of those persons have any arrests or convictions that could adversely affect the child or the applicant's ability to care for the child.

SECTION 4 limits the arrests that must be considered, in determining eligibility for kinship care payments to arrests for which a criminal charge is pending.

SECTION 5. 48.57 (3m) (d) of the statutes is renumbered 48.57 (3m) (d) (intro.) and amended to read:

48.57 **(3m)** (d) (intro.) A county department or, in a county having a population of 500,000 or more, the department shall review a placement of a child for which the county department or department makes payments under par. (am) not less than every 12 months after the county department or department begins making those payments to determine whether the conditions specified in par. (am) continue to exist. If those conditions do not continue to exist, the county department or department shall discontinue making those payments after providing the kinship care relative whose payments are being discontinued with written notice of that discontinuation not less than 10 days before the date on which those payments are to be discontinued. The notice shall advise the kinship care relative of all of the following:

SECTION 6. 48.57 (3m) (d) 1., 2. and 3. of the statutes are created to read:

48.57 **(3m)** (d) 1. That, if the payments are being discontinued on the grounds that a condition specified in par. (am) 1., 5., 5m., or 6. does not continue to exist, the kinship care relative may petition the department under par. (g) for a review of that

discontinuation by submitting a petition for review within 45 days after the date on which those payments are discontinued.

2. That, if the payments are being discontinued based on arrest or conviction record, the kinship care relative may petition the department under sub. (3p) (h) for a review of that discontinuation by submitting a petition for review within 45 days after the date on which those payments are discontinued.

3. That, if the kinship care relative submits a petition for review under par. (g) or sub. (3p) (h) before the date on which his or her payments to be discontinued, the kinship care relative's payments may not be discontinued, except as provided in par. (g) 2. a. or b., until a final decision is rendered on the petition for review, but that payments made pending the decision may be recovered by the county department or department if the discontinuation is upheld.

NOTE: SECTIONS 5 and 6 require a county department or DHFS to notify a kinship care relative of the discontinuation of payments at least 10 days in advance. The notice must include notice of the kinship care relative's rights to appeal the discontinuation and to continue receiving payments while the appeal is pending, subject to the right of the county department or DHFS to recover those payments if the discontinuation is upheld.

SECTION 7. 48.57 (3m) (f) of the statutes is amended to read:

48.57 **(3m)** (f) Any person whose application for payments under par. (am) is not acted on ~~promptly~~ within 45 days after receipt of a completed application or is denied on the grounds that a condition specified in par. (am) 1., ~~2.,~~ 5., 5m., or 6. has not been met and any person whose payments under par. (am) are discontinued under par. (d) may petition the department under par. (g) for a review of that ~~action or~~ failure to act, denial, or discontinuation. Review is unavailable if the ~~action or~~ failure to act, denial, or discontinuation arose more than 45 days before submission of the petition for review.

SECTION 8. 48.57 (3m) (g) 2. of the statutes is amended to read:

48.57 **(3m)** (g) 2. If a recipient requests a hearing ~~within 10 days after the date of notice that his or her payments under par. (am) are being discontinued~~ before the date on which his or her payments under par. (am) are to be discontinued, those payments may not be discontinued, except as provided in subd. 2. a. or b., until a decision is rendered after the hearing, but payments made pending the hearing decision may be recovered by the county department or department if the ~~contested action or failure to act~~ discontinuation is upheld. The department shall promptly notify the county department of the county in which the recipient resides or, if the recipient resides in a county having a population of 500,000 or more, the subunit of the department administering ~~of the~~ kinship care ~~program~~ in that county that the recipient has requested a hearing. Payments under par. (am) shall be discontinued pending a hearing decision if any of the following applies:

NOTE: Under current law, if a county department or DHFS determines that a kinship care relative is no longer eligible to receive kinship care payments, the county department or DHFS must discontinue those payments. In general, if the recipient requests a hearing on the discontinuation within 10 days of the date of the notice that payments will be discontinued, the payments may not be discontinued pending the hearing decision. Under SECTION 8, a kinship care relative must request a hearing before the date the payments are to be discontinued, in order to continue receiving payments pending the hearing decision.

SECTION 9. 48.57 (3n) (am) 4. and 4m. of the statutes are amended to read:

48.57 **(3n)** (am) 4. The county department or department conducts a background investigation under sub. (3p) of the long–term kinship care relative, the employees and prospective employees of the long–term kinship care relative who have or would have regular contact with the child for whom the payments would be made, and any other adult resident, as defined in sub. (3p) (a), of the long–term kinship care relative's home to determine if the long–term kinship care relative, employee, prospective employee, or adult resident has any arrests for which a

criminal charge is pending or convictions that are likely to adversely affect the child or the long–term kinship care relative's ability to care for the child.

4m. Subject to sub. (3p) (fm) 1m. and 2m., the long–term kinship care relative states that he or she does not have any arrests for which a criminal charge is pending or convictions that could adversely affect the child or the long–term kinship care relative's ability to care for the child and that, to the best of the long–term kinship care relative's knowledge, no adult resident, as defined in sub. (3p) (a), and no employee or prospective employee of the long–term kinship care relative who would have regular contact with the child has any arrests for which a criminal charge is pending or convictions that could adversely affect the child or the long–term kinship care relative's ability to care for the child.

NOTE: SECTION 9 limits the arrests that must be considered in a criminal background check to determine eligibility for long–term kinship care payments to arrests for which a criminal charge is pending.

SECTION 10. 48.57 (3n) (d) of the statutes is renumbered 48.57 (3n) (d) (intro.) and amended to read:

48.57 **(3n)** (d) (intro.) The county department or, in a county having a population of 500,000 or more, the department shall, at least once every 12 months after the county department or department begins making payments under this subsection, determine whether any of the events specified in par. (am) 6. a. to f. ~~have~~ has occurred. If any such ~~events have~~ event has occurred, the county department or department shall discontinue making those payments after providing the long–term kinship care relative whose payments are being discontinued with written notice of that discontinuation not less than 10 days before the date on which those payments are to be discontinued. The notice shall advise the long–term kinship care relative of all of the following:

SECTION 11. 48.57 (3n) (d) 1. and 2. of the statutes are created to read:

48.57 **(3n)** (d) 1. That the long–term kinship care relative may petition the department under par. (g) for a review of that discontinuation by submitting a petition for review within 45 days after the date on which those payments are discontinued.

2. That, if the long–term kinship care relative submits a petition for review under par. (g) before the date on which his or her payments are to be discontinued, the long–term kinship care relative's payments may not be discontinued, except as provided in par. (g) 2. a. or b., until a final decision is rendered on the petition for review, but that payments made pending the decision may be recovered by the county department or department if the discontinuation is upheld.

NOTE: SECTIONS 10 and 11 require a county department or DHFS to notify a long–term kinship care relative of the discontinuation of payments at least 10 days in advance. The notice must include notice of the long–term kinship care relative's rights to appeal and to continue receiving payments while the appeal is pending, subject to the right of the county department or DHFS to recover those payments if the discontinuation is upheld.

SECTION 12. 48.57 (3n) (f) of the statutes is amended to read:

48.57 **(3n)** (f) Any person whose application for payments under par. (am) is not acted on ~~promptly~~ within 45 days after receipt of a completed application or is denied on the grounds that a condition specified in par. (am) 1., 2., 5., 5m., or 5r. has not been met and any person whose payments under par. (am) are discontinued under par. (d) may petition the department under par. (g) for a review of that ~~action or~~ failure to act, denial, or discontinuation. Review is unavailable if the ~~action or~~ failure to act, denial, or discontinuation arose more than 45 days before submission of the petition for review.

SECTION 13. 48.57 (3n) (g) 2. of the statutes is amended to read:

48.57 **(3n)** (g) 2. If a recipient requests a hearing ~~within 10 days after the date of notice that his or her payments under par. (am) are being discontinued~~ before the date on which his or her payments under par. (am) are to be discontinued, those payments may not be discontinued, except as provided in subd. 2. a. or b., until a decision is rendered after the hearing, but payments made pending the hearing decision may be recovered by the county department or department if the ~~contested action or failure to act~~ discontinuation is upheld. The department shall promptly notify the county department of the county in which the recipient resides or, if the recipient resides in a county having a population of 500,000 or more, the subunit of the department administering ~~of the~~ long–term kinship care ~~program~~ in that county that the recipient has requested a hearing. Payments under par. (am) shall be discontinued pending a hearing decision if any of the following applies:

NOTE: Under SECTION 13, a long–term kinship care relative whose payments are discontinued must request a hearing before the date the payments are to be discontinued in order to continue receiving payments pending the hearing decision.

SECTION 14. 48.57 (3p) (d) of the statutes is amended to read:

48.57 **(3p)** (d) If the person being investigated under par. (b) or (c) is a nonresident, or at any time within the 5 years preceding the date of the application has been a nonresident, or if the county department or, in a county having a population of 500,000 or more, the department of health and family services determines that the person's employment, licensing, or state court records provide a reasonable basis for further investigation, the county department or department of health and family services shall require the person to be fingerprinted on 2 fingerprint cards, each bearing a complete set of the person's fingerprints. The department of justice may provide for the submission of the fingerprint cards to the federal bureau of investigation for the purposes of verifying the identity of the person

fingerprinted and obtaining records of his or her ~~criminal arrest and conviction~~ arrests for which a criminal charge is pending and convictions.

SECTION 15. 48.57 (3p) (e) 4. of the statutes is amended to read:

48.57 **(3p)** (e) 4. Information regarding the ~~conviction record of the person~~ person's record of arrests for which a criminal charge is pending and convictions under the law of this state or any other state or under federal law. This information shall be provided on a notarized background verification form that the department shall provide by rule.

SECTION 16. 48.57 (3p) (fm) 1. of the statutes is amended to read:

48.57 **(3p)** (fm) 1. The county department or, in a county having a population of 500,000 or more, the department of health and family services may provisionally approve the making of payments under sub. (3m) based on the applicant's statement under sub. (3m) (am) 4m. The county department or department of health and family services may not finally approve the making of payments under sub. (3m) unless the county department or department of health and family services receives information from the department of justice indicating that the arrest and conviction record of the applicant under the law of this state ~~is satisfactory according to the criteria specified in par. (g) 1. to 3.~~ does not include any arrest for which a criminal charge is pending or conviction that could adversely affect the child or the ability of the applicant to care for the child or payment is approved under par. (h) 4. The county department or department of health and family services may make payments under sub. (3m) conditioned on the receipt of information from the federal bureau of investigation indicating that the person's arrest and conviction record under the law of any other state or under federal law ~~is satisfactory according to the criteria specified in par. (g)~~

~~1. to 3~~ does not include any arrest for which a criminal charge is pending or conviction that could adversely affect the child or the ability of the applicant to care for the child.

SECTION 17. 48.57 (3p) (fm) 1m. of the statutes is amended to read:

48.57 **(3p)** (fm) 1m. The county department or, in a county having a population of 500,000 or more, the department of health and family services may not enter into the agreement under sub. (3n) (am) 6. unless the county department or department of health and family services receives information from the department of justice ~~relating to the~~ indicating that the arrest and conviction record of the applicant under the law of this state ~~and that record indicates either that the applicant has not been arrested or convicted or that the applicant has been arrested or convicted but~~ does not include any arrest for which a criminal charge is pending or conviction that the director of the county department or, in a county having a population of 500,000 or more, the person designated by the secretary of health and family services to review arrest and conviction records under this subdivision determines ~~that the conviction record is satisfactory because it does not include any arrest or conviction that the director or person designated by the secretary determines~~ is likely to adversely affect the child or the ~~long–term kinship care relative's~~ applicant's ability to care for the child. The county department or, in a county having a population of 500,000 or more, the department of health and family services may make payments under sub. (3n) conditioned on the receipt of information from the federal bureau of investigation indicating that the person's arrest and conviction record under the law of any other state or under federal law ~~is satisfactory because the conviction record~~ does not include any arrest for which a criminal charge is pending or conviction that the director of the county department or, in a county having a population of 500,000 or more, the person designated by the secretary of health and family services to review

arrest and conviction records under this subdivision determines is likely to adversely affect the child or the ~~long–term kinship care relative's~~ person's ability to care for the child.

SECTION 18. 48.57 (3p) (fm) 2. of the statutes is amended to read:

48.57 **(3p)** (fm) 2. A person receiving payments under sub. (3m) may provisionally employ a person in a position in which that person would have regular contact with the child for whom those payments are being made or provisionally permit a person to be an adult resident if the person receiving those payments states to the county department or, in a county having a population of 500,000 or more, the department of health and family services that the employee or adult resident does not have any arrests for which a criminal charge is pending or convictions that could adversely affect the child or the ability of the person receiving payments to care for the child. A person receiving payments under sub. (3m) may not finally employ a person in a position in which that person would have regular contact with the child for whom those payments are being made or finally permit a person to be an adult resident until the county department or, in a county having a population of 500,000 or more, the department of health and family services receives information from the department of justice indicating that the person's arrest and conviction record under the law of this state ~~is satisfactory according to the criteria specified in par. (g) 1. to 3. and the county department or, in a county having a population of 500,000 or more, the department of health and family services so advises the person receiving payments under sub. (3m)~~ does not include any arrest for which or criminal charge is pending or conviction that could adversely affect the child or the ability of the person receiving payments to care for the child or until a decision is made under par. (h) 4. to permit ~~a person who is receiving payments under sub. (3m) to employ a~~

~~person in a position in which that person would have regular contact with the child for whom payments are being made or to permit a~~ the person to be so employed or to be an adult resident ~~and the county department or, in a county having a population of 500,000 or more, the department of health and family services so advises the~~ person receiving ~~payments under sub. (3m)~~. A person receiving payments under sub. (3m) may finally employ a person in a position in which that person would have regular contact with the child for whom those payments are being made or finally permit a person to be an adult resident conditioned on the receipt of information ~~from~~ by the county department or, in a county having a population of 500,000 or more, the department of health and family services ~~that~~ from the federal bureau of investigation ~~indicates~~ indicating that the person's arrest and conviction record under the law of any other state or under federal law ~~is satisfactory according to the criteria specified in par. (g) 1. to 3~~ does not include any arrest for which or criminal charge is pending or conviction that could adversely affect the child or the ability of the person receiving payments to care for the child.

SECTION 19. 48.57 (3p) (fm) 2m. of the statutes is amended to read:

48.57 **(3p)** (fm) 2m. A person receiving payments under sub. (3n) may provisionally employ a person in a position in which that person would have regular contact with the child for whom those payments are being made or provisionally permit a person to be an adult resident if the person receiving those payments states to the county department or, in a county having a population of 500,000 or more, the department of health and family services that, to the best of his or her knowledge, the employee or adult resident does not have any arrests for which a criminal charge is pending or convictions that could adversely affect the child or the ability of the person receiving payments to care for the child. A person receiving payment under

sub. (3n) may not finally employ a person in a position in which that person would have regular contact with the child for whom those payments are being made or finally permit a person to be an adult resident until the county department or, in a county having a population of 500,000 or more, the department of health and family services receives information from the department of justice ~~relating to the person's~~ indicating that the arrest and conviction record of the person under the law of this state ~~and that record indicates either that the person has not been arrested or convicted~~ or that the person has ~~been arrested or convicted but~~ does not include any arrest for which a criminal charge is pending or conviction that the director of the county department or, in a county having a population of 500,000 or more, the person designated by the secretary of health and family services to review arrest and conviction records under this subdivision determines ~~that the conviction record is satisfactory because it does not include any arrest or conviction that~~ is likely to adversely affect the child or the ~~long–term kinship care relative's~~ ability of the person receiving payments to care for the child ~~and the county department or department of health and family services so advises the person receiving payments under sub. (3n)~~. A person receiving payments under sub. (3n) may finally employ a person in a position in which that person would have regular contact with the child for whom those payments are being made or finally permit a person to be an adult resident conditioned on the receipt of information ~~from~~ by the county department or, in a county having a population of 500,000 or more, the department of health and family services ~~that~~ from the federal bureau of investigation ~~indicates~~ indicating that the person's arrest and conviction record under the law of any other state or under federal law ~~is satisfactory because the conviction record~~ does not include any arrest for which a criminal charge is pending or conviction that the director of the county

department or, in a county having a population of 500,000 or more, the person designated by the secretary of health and family services to review arrest and conviction records under this subdivision determines is likely to adversely affect the child or the ~~long–term kinship care relative's~~ ability of the person receiving payments to care for the child.

NOTE: SECTIONS 14 through 19 limit the arrests that may be considered in conducting a criminal background check for the purpose of determining kinship care eligibility to arrests for which a criminal charge is pending.

SECTION 20. 48.57 (3p) (g) (intro.) of the statutes is amended to read:

48.57 **(3p)** (g) (intro.) Except as provided in par. (h), the county department or, in a county having a population of 500,000 or more, the department of health and family services may not make payments to a person applying for payments under sub. (3m) and a person receiving payments under sub. (3m) may not employ a person in a position in which that person would have regular contact with the child for whom those payments are being made or permit a person to be an adult resident if any of ~~the following applies~~ the person has been convicted or penalized as follows and if the county department or the department of health and family services determines that the conviction or penalty is likely to adversely affect the child or the ability of the person applying for or receiving payments to care for the child:

NOTE: Section 48.57 (3p) (g) 1. to 3. lists certain convictions and penalties for which kinship care payments must be denied. The listed convictions and penalties still apply, but this SECTION requires a county department or DHFS to determine whether such a conviction or penalty adversely affects the kinship care relative's ability to care for the child before denying kinship care benefits.

SECTION 21. 48.57 (3p) (h) 1. of the statutes is amended to read:

48.57 **(3p)** (h) 1. A person who is denied payments under sub. (3m) ~~for a reason specified in par. (g) 1., 2. or 3.~~ based on the person's arrest or conviction record or a person who is prohibited from employing a person in a position in which that person

would have regular contact with the child for whom payments under sub. (3m) are being made from permitting a person to be an adult resident ~~for a reason specified in par. (g) 1., 2. or 3.~~ based on the person's arrest or conviction record may ~~request that~~ petition the department for a review of the denial of payments or the prohibition on employment or being an adult resident ~~be reviewed~~ under subd. 2. Review is unavailable if the denial or prohibition occurred more than 45 days before submission of the petition for review.

SECTION 22. 48.57 (3p) (h) 2. of the statutes is repealed and recreated to read:

48.57 **(3p)** (h) 2. Upon receipt of a timely petition under subd. 1., the department shall give the petitioner reasonable notice and an opportunity for a fair hearing. The department may make such additional investigation as it considers necessary. Notice of the hearing shall be given to the petitioner and to the county department or subunit of the department whose denial or prohibition is the subject of the petition. That county department or subunit of the department may be represented at the hearing.

SECTION 23. 48.57 (3p) (h) 3. of the statutes is amended to read:

48.57 **(3p)** (h) 3. The ~~director of the county~~ department~~, the person designated by the governing body of a federally recognized American Indian tribe or band or, in a county having a population of 500,000 or more, the person designated by the secretary of health and family services~~ shall review the denial of payments or the prohibition on employment or being an adult resident to determine if the arrest or conviction ~~record~~ on which the denial or prohibition is based ~~includes any arrests, convictions or penalties that are~~ is likely to adversely affect the child or the ability of the ~~kinship care relative~~ petitioner to care for the child. In reviewing the denial or prohibition, the ~~director of the county~~ department~~, the person designated by the~~

~~governing body of the federally recognized American Indian tribe or band or the person designated by the secretary of health and family services~~ shall consider, but not be limited to, all of the following factors:

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~~ conviction or penalty and how that ~~violation~~ conviction or penalty affects the ability of the ~~kinship care relative~~ petitioner to care for the child.

c. Whether ~~making an exception to~~ the denial or prohibition ~~would be~~ is in the best interests of the child.

SECTION 24. 48.57 (3p) (h) 4. of the statutes is repealed and recreated to read:

48.57 **(3p)** (h) 4. The department shall render its decision as soon as possible after the hearing and shall send a certified copy of its decision to the petitioner and to the county department or subunit of the department whose denial or prohibition is the subject of the petition. The decision of the department shall have the same effect as an order of the county department or subunit of the department whose denial or prohibition is the subject of the petition. The decision shall be final, but may be revoked or modified as altered conditions may require. The department shall deny a petition for review or shall refuse to grant relief if any of the following applies:

a. The petitioner withdraws the petition in writing.

b. The petitioner abandons the petition. Abandonment occurs if the petitioner fails to appear in person or by a representative at a scheduled hearing without good cause, as determined by the department.

SECTION 25. 48.57 (3p) (h) 5. of the statutes is repealed.

NOTE: Under SECTIONS 21 through 25 if a person is denied kinship care payments on the basis of his or her arrest or conviction record or prohibited from employing a person or permitting an adult from living in the person's home based on that person's arrest or conviction record, the person may petition the DHFS within 45 days of the denial or prohibition for review. The review must determine whether the arrest or conviction record will likely adversely affect the child or the person's ability to care for the child. Upon receipt of a timely petition, DHFS must give the petitioner an opportunity for a fair hearing.

SECTION 26. 48.57 (3p) (hm) of the statutes is amended to read:

48.57 **(3p)** (hm) A county department or, in a county having a population of 500,000 or more, the department may not make payments to a person under sub. (3n) and a person receiving payments under sub. (3n) may not employ a person in a position in which that person would have regular contact with the child for whom payments are being made or permit a person to be an adult resident if the director of the county department or, in a county having a population of 500,000 or more, the person designated by the secretary to review arrest and conviction records under this paragraph determines that the person has any arrest for which a criminal charge is pending or conviction that is likely to adversely affect the child or the ~~long–term kinship care relative's~~ ability of the person receiving payments to care for the child.

NOTE: SECTION 26 limits the arrests that may be considered in conducting a criminal background check for the purpose of determining long–term kinship care eligibility to arrests for which a criminal charge is pending.

SECTION 27. 48.57 (3r) of the statutes is created to read:

48.57 **(3r)** If the amounts in the appropriation under s. 20.435 (3) (kc) are insufficient to provide payments under sub. (3m) (am) (intro.) or (3n) (am) (intro.) to all persons who are eligible to receive those payments, the department may request the secretary of administration under s. 16.515 to supplement that appropriation for the purpose of increasing funding for those payments. Notwithstanding s. 16.515 (1), the secretary of administration may supplement the appropriation under s. 20.435 (3) (kc) if all of the following occur:

(a) The secretary of administration determines that the amounts in the appropriation are insufficient to provide payments under sub. (3m) (am) (intro.) or (3n) (am) (intro.) to all persons who are eligible to receive those payments.

(b) The joint committee on finance either does not schedule a meeting for the purpose of reviewing the proposed supplementation within 14 working days after the secretary of administration notifies the committee of the proposed supplementation or, if the committee schedules a meeting for the purpose of reviewing the proposed supplementation, the committee approves the proposed supplementation.

NOTE: SECTION 27 permits DHFS to request the secretary of administration to provide supplemental funding for kinship care and long–term kinship care payments if the amount appropriated for those payments is insufficient to provide those payments to all persons who are eligible to receive those payments. The joint committee on finance must approve any supplemental funding proposed by the secretary of administration.

SECTION 28. 48.57 (3t) of the statutes is amended to read:

48.57 **(3t)** Notwithstanding subs. (3m), (3n), and (3p), the department may enter into an agreement with the governing body of a federally recognized American Indian tribe or band to allow that governing body to administer the program under subs. (3m), (3n), and (3p) within the boundaries of that reservation. Any agreement under this subsection relating to the administration of the program under sub. (3m) ~~shall specify the person with whom a request for review under sub. (3p) (h) 2. may be filed and the person who has been designated by the governing body to conduct the review under sub. (3p) (h) 3. and make the determination under sub. (3p) (h) 4. Any agreement under this subsection relating to the administration of the program under sub. (3n),~~ (3n), and (3p) shall specify who is to make any determination as to whether ~~a~~ an arrest and conviction record is satisfactory.

SECTION 29. 48.979 of the statutes is created to read:

48.979 Authorization to consent to health services. (1) DEFINITIONS. In this section:

(a) "Caregiver" means an individual who has attained 18 years of age with whom a child resides.

(b) "Health care facility" has the meaning given in s. 155.01 (6).

(c) "Health care provider" means any person licensed, registered, permitted, or certified by the department of health and family services or by the department of regulation and licensing to provide health services in this state.

(d) "Health services" means any ordinary or emergency care, treatment, service, or procedure to maintain, diagnose, or treat a physical or mental condition.

(2) AUTHORIZING A CAREGIVER TO CONSENT TO HEALTH SERVICES. (a) A parent may authorize a caregiver to consent to health services for the parent's child by completing a health services consent form.

(b) A valid health services consent form shall be all of the following:

1. In writing.

2. Dated and signed by the parent and the caregiver whom the parent is authorizing to consent to health services for the child.

3. Voluntarily executed.

(c) A health services consent form under this section shall remain in effect for the period of time specified on the form, which period may not exceed one year from the date on which the form is executed, unless the form is revoked or otherwise made invalid earlier.

(d) Nothing in this section shall be construed to make invalid other instruments that are voluntarily executed by a parent authorizing an individual or other entity to consent to health services for the parent's child.

(3) EFFECT OF HEALTH SERVICES CONSENT FORM; FORM. (a) Unless the health services consent form, a guardianship order, or any other court order provides otherwise, a caregiver designated in a health services consent form who is known to a health care provider to be available to consent to health services for a child has priority over all other individuals other than a parent to make health services decisions as provided in the health services consent form.

(b) The department shall prepare the health services consent form and accompanying information. The department shall include, in information accompanying the form, at least the statutory definitions of the terms used in the form. The department shall prepare the form and accompanying information in English, Spanish, and other languages spoken by a significant number of state residents, as determined by the department. The department shall make the health services consent form available at no charge on the Internet. The health services consent form prepared by the department shall be in substantially the following form:

HEALTH SERVICES CONSENT

Use of form: Use of this form is voluntary, but completion of the form will aid the caregiver of a child in ensuring that appropriate and timely health care is provided for the child. The form is to be completed by the parent of a child who is being cared for by another adult.

Instructions: If additional space is needed, attach a separate sheet or use reverse side of this form.

AUTHORIZATION TO CONSENT

TO HEALTH SERVICES

I, ... (print name of parent), hereby authorize my child's caregiver .... (print name of caregiver), to do the following for my child, ... (print name and date of birth of child):

A. Routine Health Services Consent and Exclusions:

Provide consent for routine health services for the above–named child, including medical and dental examinations and nonemergency prescribed treatments (for example, tooth repair, immunizations, and medications), with the following exceptions: (If there are no exceptions, write "none.")

.....

.....

B. Emergency Health Services Consent and Exclusions:

In case of a medical emergency involving the above–named child, arrange for emergency health services using the following procedures:

1. A reasonable effort will be made to contact me and secure my consent for needed emergency health services, including surgical procedures.

2. If I cannot be located within a reasonable time, the child's caregiver has the authority to consent to emergency health services, including surgery performed.

3. All health services will be provided under the direction of a licensed dental care provider or physician or other licensed health care provider as appropriate.

I have no objections to the caregiver exercising his or her authority to consent to emergency health services as provided above, with the following exceptions: (If there are no exceptions, write "none.")

.....

.....

The authority granted under this health services consent form shall remain in effect until .... (print date), unless revoked or made invalid earlier. (The parent may specify any date agreed to between the parent and caregiver up to one year after the date on which the form is signed.)

Signature of parent .... Date ....

Name of parent (print) ....

STATEMENT OF CAREGIVER

I understand that .... (name of parent) has authorized me to make health services decisions for .... (name of child). I agree to make health services decisions for the above–named child consistent with what I and the child's health care providers believe is in the child's best interest, consistent with the authority granted in this form, and consistent with any other wishes or beliefs of the child's parent of which I am aware.

Signature of Caregiver .... Date ....

CONTACT INFORMATION

A. Parent:

Name (print) ....

Home address .... Home telephone number ....

Work address .... Work telephone number ....

Other address (specify) .... Other telephone number ....

B. Caregiver:

Name (print) ....

Home address .... Home telephone number ....

Work address .... Work telephone number ....

Other address (specify) .... Other telephone number ....

(4) REVOCATION OF HEALTH SERVICES FORM. (a) A parent may revoke a health services consent form at any time by doing any of the following:

1. Canceling, defacing, obliterating, burning, tearing, or otherwise destroying the health services consent form.

2. Executing a statement, in writing, that is signed and dated by the parent, expressing the parent's intent to revoke the health services consent form.

3. Executing a subsequent health services consent form.

(b) A health services consent form is not valid if the minor no longer resides with the caregiver.

(c) If a caregiver knows that the instrument that authorized him or her to make health services decisions for a child has been revoked or is no longer valid, the caregiver shall communicate this fact to any health care provider for the child that the caregiver knows has a copy of the health services consent form.

(d) The child's health care provider shall, upon notification of revocation or invalidity of the health services consent form, record in the child's medical record the time, date, and place of the notification to the health care provider of the revocation or invalidity.

(5) DUTIES AND IMMUNITIES. (a) No health care facility or health care provider may be charged with a crime, held civilly liable, or charged with unprofessional

conduct for any of the following in providing health services under a health services consent form:

1. Complying, in the absence of actual knowledge of a revocation, with the terms of a health services consent form that is in compliance with this section or the decision of a caregiver that is made under a health services consent form that is in compliance with this section.

2. Acting contrary to or failing to act on a revocation of a health services consent form, unless the health care facility or health care provider has actual knowledge of the revocation.

3. Acting contrary to or failing to act on the health services decision of a parent, unless the health care facility or health care provider has actual knowledge of the parent's health services decision.

(b) In the absence of actual notice to the contrary, a health care facility or health care provider may presume that a parent was authorized to execute the health services consent form under the requirements of this section and that the form is valid.

(c) No caregiver may be charged with a crime or held civilly liable for making a decision in good faith under a health services consent form that is in compliance with this section.

(6) PENALTIES. (a) Whoever knowingly falsifies or forges a health services consent form with intent to create the false impression that a person other than the caregiver has been designated to consent to health services for a child is subject to a forfeiture not to exceed $200.

(b) Whoever gives or attempts to give consent for health services based on a health services consent form that the individual knows has been executed without

the voluntary consent of the parent, that the individual knows has been forged or substantially altered without the authorization of the child's parent, or that the individual knows has been revoked, with the intent to act contrary to the parent's wishes may be fined not more than $500 or imprisoned for not more than 30 days or both.

NOTE: SECTION 29 creates a new section in the Children's Code that allows a parent to complete a form that gives an adult with whom a child lives the authority to make health services decisions for the child on behalf of the parent.

This SECTION includes a health services consent form. The form must be signed by the parent and by the caregiver. DHFS must prepare the health services consent form and accompanying information and make the form available, at no charge, on the Internet. The form must be prepared in English, Spanish, and any other language that DHFS determines is spoken by a significant number of state residents.

A valid health services consent form gives the caregiver the authority to make routine and emergency health care decisions for the named child. A contravening decision by a parent, however, supersedes the caregiver's decision.

This SECTION allows a parent to revoke a health services consent form. Also, a form is not valid if the child no longer lives with the caregiver.

This SECTION provides immunity from liability for health care providers who act in good faith in complying with a health services consent form. In addition, a caregiver may not be liable for making a decision in good faith under a valid health services consent form.

The SECTION provides penalties for falsifying a health services consent form and for attempting to give consent under a forged or revoked form with the intent of acting contrary to the wishes of the child's parent's.

SECTION 30. 49.155 (5) of the statutes is renumbered 49.155 (5) (a) and amended to read:

49.155 **(5)** (a) An individual is liable for the percentage of the cost of the child care specified by the department in a printed copayment schedule except as provided in pars. (b), (c), and (d).

(b) An individual who is under the age of 20 and is attending high school or participating in a course of study meeting the standards established under s. 115.29 (4) for the granting of a declaration of equivalency to high school graduation may not be determined liable for more than the minimum copayment amount for the type of child care received and the number of children receiving child care.

SECTION 31. 49.155 (5) (c) and (d) of the statutes are created to read:

49.155 **(5)** (c) An individual who is receiving payments under s. 48.57 (3m) or (3n) for providing care and maintenance for a child is not liable for a copayment for the child.

(d) An individual who the department specifies, by rule, is not liable for a copayment.

NOTE: SECTIONS 30 and 31 create an exception to the requirement that an individual who receives a child care subsidy is liable for a percentage of the cost of the child care. Under SECTION 31, a kinship care relative and a person who the department of workforce development specifies is not liable for a copayment are not liable for a copayment.

SECTION 32. 880.08 (3) (am) (intro.) of the statutes is amended to read:

880.08 **(3)** (am) (intro.) When the proposed ward is a minor, notice shall be given as provided in s. 879.05 to all of the following persons, if applicable, except that notice required to be given by publication shall be published as a class 1 notice:

NOTE: SECTION 32 modifies current law so that notice of a hearing to appoint a guardian for a minor must be published in a newspaper as a class 1 notice (i.e., published once) if personal service is not possible. Under current law, such notice must be published as a class 3 notice (i.e., published 3 times).

SECTION 33. Nonstatutory provisions.

(1) GUARDIANSHIP AND LEGAL CUSTODY OF MINORS. The joint legislative council is requested to study state laws regarding guardianship and legal custody of minors and the rights and responsibilities of guardians and legal custodians. If the joint legislative council conducts the study, the joint legislative council shall report its findings, conclusions, and recommendations to the legislature in the manner provided under section 13.172 (2) of the statutes by January 1, 2005.

(2) The department of health and family services shall study methods to manage funding for kinship care payments in order to minimize the need for waiting lists for kinship care payments. The department shall submit a report summarizing

the results of the study to the appropriate standing committees of the legislature in the manner provided under section 13.172 (3) of the statutes by June 30, 2004.

NOTE: SECTION 33 requests the Joint Legislative Council to study state laws regarding guardianship and legal custody of minors and the rights and responsibilities of guardians and legal custodians.

SECTION 33 also requires DHFS to study methods to manage funding for kinship care payments in order to minimize the need for waiting lists for payments and to report on the results of its study to the appropriate standing committees of the legislature by June 30, 2004.

(END)

Emery, Lynn

From: Sappenfield, Anne
Sent: Wednesday, March 19, 2003 9:30 AM
To: LRB.Legal
Subject: Draft review: LRB 03-2081/1 Topic: Relative caregivers

It has been requested by <Sappenfield, Anne> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 03-2081/1 Topic: Relative caregivers