

2003 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB201)

Received: 10/03/2003

Received By: gmalaise

Wanted: Soon

Identical to LRB:

For: Legislative Council - JLC 7-9485

By/Representing: Anne Sappenfield

This file may be shown to any legislator: NO

Drafter: gmalaise

May Contact:

Addl. Drafters:

Subject: Children - out-of-home placement

Extra Copies:

Submit via email: YES

Requester's email: anne.sappenfield@legis.state.wi.us

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Kinship care; guardianships' health services consent forms

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	gmalaise 10/04/2003	kfollett 10/15/2003 kfollett 10/21/2003		_____			
/1			pgreensl 10/22/2003	_____	sbasford 10/22/2003	sbasford 10/22/2003	

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/2	gmalaise 01/23/2004	kgilfoy 01/26/2004 kfollett 01/28/2004 kfollett 01/29/2004	rschluet 01/26/2004 jfrantze 01/29/2004	_____ _____ _____ _____	sbasford 01/29/2004	sbasford 01/29/2004	
/3	gmalaise 02/16/2004	kfollett 02/17/2004	jfrantze 02/17/2004	_____ _____	lemery 02/17/2004	lemery 02/17/2004	
/4	gmalaise 02/23/2004	csicilia 02/23/2004	pgreensl 02/23/2004	_____ _____	lemery 02/23/2004	lemery 02/23/2004	

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[Handwritten signatures and dates: 10/17]

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		kfollett 01/29/2004		_____			

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/?	gmalaise	1/1 kjf 10/21	10/22 ps	10/22 ps kjf			

FE Sent For:

<END>

Malaise, Gordon

From: Sappenfield, Anne
Sent: Tuesday, September 30, 2003 10:47 AM
To: Malaise, Gordon
Subject: AB 201

Hi Gordon!

Here are the changes (of course, we'll be waiting to have DHFS sign off on these once they are drafted--arghhhh!!!)--



.pdf

AM 48.57 (3m)(qm)2.

--for the eligibility criteria, keep current law, but add to the CHIPS or JIPS criterion "or the child has been living with the kinship care relative for 2 years or longer [language on p. 3, lines 10-14].

--in determining eligibility for kinship care payments, allow the county department or DHFS to consider an arrest for one of the crimes listed under s. 49.57 (3p) (g). Current law allows them to consider any arrest. The bill allows them to consider only arrests for which a charge is pending. = Define "arrest"

--for appeals of a finding that a person is ineligible for kinship care payments due to criminal background, require appeal to co. or DHFS, as under current law, but allow applicant to appeal to state if wishes to appeal co. or DHFS decision. (3p)(h)2, 3, 4.

--for notice that a relative is no longer eligible for kinship care payments, use current law notice requirements if disqualification due to finding that child no longer lives with relative; otherwise, use notice provisions in the bill.

Thanks so much!!

48.57 (3m)(d)
(8)

CR
CR 4m
RC 5.

Anne

1 **AN ACT** to create 48.979 of the statutes; **relating to:** creating a health services
2 consent form.

LEGISLATIVE COUNCIL STAFF PREFATORY NOTE: This bill draft creates a health services consent form that parents may use to transfer decision-making authority for nonemergency and emergency health services to an adult with whom the child resides.

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

3 **SECTION 1.** 48.979 of the statutes is created to read:

4 **48.979 Authorization to consent to health services. (1) DEFINITIONS.** In this section:

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

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

8 (c) "Health care provider" has the meaning given in s. 146.81 (1).

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

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

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

15 1. In writing.

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

18 3. Voluntarily executed.

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

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

7 (3) EFFECT OF HEALTH SERVICES CONSENT FORM; FORM. (a) Unless the health services
8 consent form, a guardianship order, or any other court order provides otherwise, a caregiver
9 designated in a health services consent form who is known to a health care provider to be
10 available to consent to health services for a child has priority over all other individuals other
11 than a parent [who is not currently denied periods of physical placement with the child] to make
12 health services decisions as provided in the health services consent form.

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

20 HEALTH SERVICES CONSENT

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

1 agreed to between the parent and caregiver up to one year after the date on which the form is
2 signed.)

3 Signature of parent Date

4 Name of parent (print)

5 STATEMENT OF CAREGIVER

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

11 Signature of Caregiver Date

12 CONTACT INFORMATION

13 A. Parent:

14 Name (print)

15 Home address Home telephone number

16 Work address Work telephone number

17 Other address (specify) Other telephone number

18 B. Caregiver:

19 Name (print)

20 Home address Home telephone number

21 Work address Work telephone number

22 Other address (specify) Other telephone number

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

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

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

5 3. Executing a subsequent health services consent form.

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

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

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

15 **(5) DUTIES AND IMMUNITIES.** (a) No health care facility or health care provider may be
16 charged with a crime, held civilly liable, or charged with unprofessional conduct for any of
17 the following in providing health services under a health services consent form:

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

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

2003

Date (time) needed

~~5/27/03~~ (PR1)

LRBs 0206 / 1

GMM : KJ :

SUBSTITUTE AMENDMENT [TO A BILL]

Use the appropriate components and routines developed for substitute amendments.

~~SA~~ (A) SUBSTITUTE AMENDMENT
TO 2003 ~~SB~~ (AB) 201 (LRB- /)

AN ACT ... [generate catalog] *to repeal* ... ; *to renumber* ... ; *to consolidate and renumber* ... ; *to renumber and amend* ... ; *to consolidate, renumber and amend* ... ; *to amend* ... ; *to repeal and recreate* ... ; and *to create* ... of the statutes; relating to:

.....
.....
.....
.....

[NOTE: See section 4.02 (2) (br), Drafting Manual, for specific order of standard phrases.]

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

SECTION #.

50206/1

~~2003 ASSEMBLY BILL 201~~

~~March 25, 2003 - Introduced by JOINT LEGISLATIVE COUNCIL. Referred to
Committee on Children and Families.~~

Repeal to

1 AN ACT *to repeal* 48.57 (3p) (h) 5.; *to renumber* 48.57 (3m) (am) 2.; *to renumber*
2 *and amend* 48.57 (3m) (am) 1., 48.57 (3m) (d), 48.57 (3n) (d) and 49.155 (5); *to*
3 *amend* 48.57 (3m) (am) 4. and 4m., 48.57 (3m) (f), 48.57 (3m) (g) 2., 48.57 (3n)
4 (am) 4. and 4m., 48.57 (3n) (f), 48.57 (3n) (g) 2., 48.57 (3p) (d), 48.57 (3p) (e) 4.,
5 48.57 (3p) (fm) 1., 48.57 (3p) (fm) 1m., 48.57 (3p) (fm) 2., 48.57 (3p) (fm) 2m.,
6 48.57 (3p) (g) (intro.), 48.57 (3p) (h) 1., 48.57 (3p) (h) 3., 48.57 (3p) (hm), 48.57
7 (3t) and 880.08 (3) (am) (intro.); *to repeal and recreate* 48.57 (3p) (h) 2. and
8 48.57 (3p) (h) 4.; and *to create* 48.57 (3m) (am) 1. b., 48.57 (3m) (d) 1., 2. and
9 3., 48.57 (3n) (d) 1. and 2., 48.57 (3r), 48.979 and 49.155 (5) (c) and (d) of the
10 statutes; **relating to:** kinship care, notice of guardianship proceedings,
11 creating a health services consent form, requesting the Joint Legislative

ASSEMBLY BILL 201

- 1 Council to study guardianship and legal custody, granting rule-making
2 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~~~~

Insert
A

ASSEMBLY BILL 201

~~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.~~

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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.

ASSEMBLY BILL 201

SECTION 3

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

2 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.

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

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

12 ~~4m. Subject to sub. (3p) (fm) 1. and 2., the kinship care relative states that he~~
13 ~~or she does not have any arrests for which a criminal charge is pending or convictions~~
14 ~~that could adversely affect the child or the kinship care relative's ability to care for~~
15 ~~the child and that no adult resident, as defined in sub. (3p) (a), and no employee or~~
16 ~~prospective employee of the kinship care relative who would have regular contact~~

ASSEMBLY BILL 201

1 with the child has any arrests for which a criminal charge is pending or convictions
2 that could adversely affect the child or the kinship care relative's ability to care for
3 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.

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

6 " 48.57 (3m) (d) (intro.) A county department or, in a county having a population
7 of 500,000 or more, the department shall review a placement of a child for which the
8 county department or department makes payments under par. (am) not less than
9 every 12 months after the county department or department begins making those
10 payments to determine whether the conditions specified in par. (am) ~~continue~~ to

11 exist. ~~If those conditions~~ do not continue to exist, the county department or
12 department shall discontinue making those payments after providing the kinship
13 care relative whose payments are being discontinued with written notice of that
14 discontinuation not less than 10 days before the date on which those payments are
15 to be discontinued. The notice shall advise the kinship care relative of all of the
16 following:

17 SECTION ~~6~~ 48.57 (3m) (d) 1. ~~(intro.)~~ of the statutes are created to read:
18 ~~48.57 (3m) (d) 1.~~ That, if the payments are being discontinued on the grounds
19 that a condition specified in par. (am) 1., 5., or 6. does not continue to exist, the
20 kinship care relative may petition the department under par. (g) for a review of that

If the kinship care relative is no longer providing care and maintenance
for the child, the county department or department shall discontinue making
those payments effective immediately upon providing written notice of the discontinuation
to the kinship care relative. If any of the conditions specified in par. (am) 1., 5., or 6.

Insert
5-3

Whether the kinship care relative is still providing care and maintenance for the child and whether

1. to 6.

Insert
5-17

to (4) (4) (4)

(2)

(2.)

6.

ASSEMBLY BILL 201

SECTION 6

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

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

7 (4) That, if the kinship care relative submits a petition for review under par. (g)
8 or sub. (3p) (h) ~~before the date on which his or her payments to be discontinued,~~ the
9 kinship care relative's payments may not be discontinued, except as provided in par.
10 (g) 2. a. or b. ^{or sub. (3p) (h) 2m. a. or b.} until a final decision is rendered on the petition for review, but that
11 payments made pending the decision may be recovered by the county department or
12 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.~~

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

14 48.57 (3m) (f) Any person whose application for payments under par. (am) is
15 not acted on promptly within 45 days after receipt of a completed application or is
16 denied on the grounds that a condition specified in par. (am) 1., ^(plan) 5., 5m., or 6. has
17 not been met and any person whose payments under par. (am) are discontinued
18 under par. (d) may petition the department under par. (g) for a review of that action
19 or failure to act, denial, or discontinuation. Review is unavailable if the action or
20 failure to act, denial, or discontinuation arose more than 45 days before submission
21 of the petition for review.

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

Insert
6-21

ASSEMBLY BILL 201

SECTION 8

whose payments under par. (am) are being discontinued on the grounds that the recipient is no longer providing care

① ^(plain) ~~no strike~~ 48.57 (3m) (g) 2. If a recipient requests a hearing ^{plain} ~~(within 10 days after the date~~

2 ~~of notice that his or her payments under par. (am) are being discontinued before the~~ ^{and maintenance for the child}
3 date on which his or her payments under par. (am) are to be discontinued, those
4 payments may not be discontinued, except as provided in subd. 2. a. or b., until a
5 decision is rendered after the hearing, but payments made pending the hearing
6 decision may be recovered by the county department or department if the ~~contested~~
7 ~~action or failure to act~~ discontinuation is upheld. The department shall promptly
8 notify the county department of the county in which the recipient resides or, if the
9 recipient resides in a county having a population of 500,000 or more, the subunit of
10 the department administering ~~of the kinship care program~~ in that county that the
11 recipient has requested a hearing. Payments under par. (am) shall be discontinued
12 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.~~

13 ~~SECTION 9. 48.57 (3n) (am) 4. and 4m. of the statutes are amended to read:~~
14 ~~48.57 (3n) (am) 4. The county department or department conducts a~~
15 ~~background investigation under sub. (3p) of the long-term kinship care relative, the~~
16 ~~employees and prospective employees of the long-term kinship care relative who~~
17 ~~have or would have regular contact with the child for whom the payments would be~~
18 ~~made, and any other adult resident, as defined in sub. (3p) (a), of the long-term~~
19 ~~kinship care relative's home to determine if the long-term kinship care relative,~~
20 ~~employee, prospective employee, or adult resident has any arrests for which a~~

or or if a recipient ^{under par. (am)} whose payments are being discontinued on the grounds that a condition specified in par. (am) 1, ~~4~~ 6. does not continue to exist requests a hearing
, 2, 5, 5m, or

ASSEMBLY BILL 201

SECTION 9

~~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.

Insert 8-11

SECTION ~~10~~ 48.57 (3n) (d) of the statutes is renumbered 48.57 (3n) (d) (intro.) ^{5r} and amended to read: whether the conditions specified in par. (am) 1. to 5r.

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 Specified in par. (am) 6. a. to f. ⁸ 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: Discontinue making those payments ^{more}

5r.

immediately upon providing written notice of the discontinuation to the long-term kinship care relative. If any of the conditions specified in par. (am) 1. to 5r. do not continue to exist, the county department or department shall discontinue making those payments

ASSEMBLY BILL 201

if the whose payments are being discontinued on the grounds that a condition specified in par. (am) 1, 2, 5r, 5s, 9 does not continue to exist, the

Insert 9-1

1
2

SECTION 11. 48.57 (3n) (d) 1. ~~of the statutes~~ *to* 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.

within the time limit specified in par. (g) 2.

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4
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11
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.~~

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

13 48.57 (3n) (f) Any person whose application for payments under par. (am) is not
14 acted on promptly within 45 days after receipt of a completed application or is denied
15 on the grounds that a condition specified in par. (am) 1., 2., 5., 5m., or 5r. has not been
16 met and any person whose payments under par. (am) are discontinued under par. (d)
17 may petition the department under par. (g) for a review of that ~~action or failure to~~
18 act, denial, or discontinuation. Review is unavailable if the ~~action or failure to act,~~
19 denial, or discontinuation arose more than 45 days before submission of the petition
20 for review.

Insert 9-20

20
21

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

whose payments under par. (am) are being

discontinued on the grounds that an

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a. to

event specified in par. (am) b.

f. has occurred

(p/qn)

1 48.57 (3n) (g) 2. If a recipient requests a hearing within 10 days after the date
 2 of notice that his or her payments under par. (am) are being discontinued before the
 3 date on which his or her payments under par. (am) are to be discontinued, those
 4 payments may not be discontinued, except as provided in subd. 2. a. or b., until a
 5 decision is rendered after the hearing, but payments made pending the hearing
 6 decision may be recovered by the county department or department if the contested
 7 action or failure to act discontinuation is upheld. The department shall promptly
 8 notify the county department of the county in which the recipient resides or, if the
 9 recipient resides in a county having a population of 500,000 or more, the subunit of
 10 the department administering of the long-term kinship care program in that county
 11 that the recipient has requested a hearing. Payments under par. (am) shall be
 12 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.

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

14 48.57 (3p) (d) If the person being investigated under par. (b) or (c) is a
 15 nonresident, or at any time within the 5 years preceding the date of the application
 16 has been a nonresident, or if the county department or, in a county having a
 17 population of 500,000 or more, the department of health and family services
 18 determines that the person's employment, licensing, or state court records provide
 19 a reasonable basis for further investigation, the county department or department
 20 of health and family services shall require the person to be fingerprinted on 2
 21 fingerprint cards, each bearing a complete set of the person's fingerprints. The
 22 department of justice may provide for the submission of the fingerprint cards to the
 23 federal bureau of investigation for the purposes of verifying the identity of the person

or if a recipient whose payments under par. (am) are being discontinued
on the grounds that a condition specified in par. (am) b. to e. does
not continue to exist requests a hearing.

Insert
10-12

ASSEMBLY BILL 201

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

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

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

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

10 48.57 (3p) (fm) 1. The county department or, in a county having a population
11 of 500,000 or more, the department of health and family services may provisionally
12 approve the making of payments under sub. (3m) based on the applicant's statement
13 under sub. (3m) (am) 4m. The county department or department of health and family
14 services may not finally approve the making of payments under sub. (3m) unless the
15 county department or department of health and family services receives information
16 from the department of justice indicating that the arrest and conviction record of the
17 applicant under the law of this state ~~is satisfactory according to the criteria specified~~
18 ~~in par. (g) 1. to 3. does not include any arrest for which a criminal charge is pending~~
19 or conviction that could adversely affect the child or the ability of the applicant to care
20 for the child or payment is approved under par. (h) 4. The county department or
21 department of health and family services may make payments under sub. (3m)
22 conditioned on the receipt of information from the federal bureau of investigation
23 indicating that the person's arrest and conviction record under the law of any other
24 state or under federal law ~~is satisfactory according to the criteria specified in par. (g)~~

ASSEMBLY BILL 201

SECTION 16

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

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

4 48.57 (3p) (fm) 1m. The county department or, in a county having a population
5 of 500,000 or more, the department of health and family services may not enter into
6 the agreement under sub. (3n) (am) 6. unless the county department or department
7 of health and family services receives information from the department of justice
8 ~~relating to the~~ indicating that the arrest and conviction record of the applicant under
9 the law of this state ~~and that record indicates either that the applicant has not been~~
10 ~~arrested or convicted or that the applicant has been arrested or convicted but does~~
11 ~~not include any arrest for which a criminal charge is pending~~ or conviction that the
12 director of the county department or, in a county having a population of 500,000 or
13 more, the person designated by the secretary of health and family services to review
14 arrest and conviction records under this subdivision determines ~~that the conviction~~
15 ~~record is satisfactory because it does not include any arrest or conviction that the~~
16 ~~director or person designated by the secretary determines~~ is likely to adversely affect
17 the child or the ~~long-term kinship care relative's~~ applicant's ability to care for the
18 child. The county department or, in a county having a population of 500,000 or more,
19 the department of health and family services may make payments under sub. (3n)
20 conditioned on the receipt of information from the federal bureau of investigation
21 indicating that the person's arrest and conviction record under the law of any other
22 state or under federal law ~~is satisfactory because the conviction record does not~~
23 ~~include any arrest for which a criminal charge is pending~~ or conviction that the
24 director of the county department or, in a county having a population of 500,000 or
25 more, the person designated by the secretary of health and family services to review

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

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

5 48.57 (3p) (fm) 2. A person receiving payments under sub. (3m) may
6 provisionally employ a person in a position in which that person would have regular
7 contact with the child for whom those payments are being made or provisionally
8 permit a person to be an adult resident if the person receiving those payments states
9 to the county department or, in a county having a population of 500,000 or more, the
10 department of health and family services that the employee or adult resident does
11 not have any arrests ~~for which a criminal charge is pending~~ or convictions that could
12 adversely affect the child or the ability of the person receiving payments to care for
13 the child. A person receiving payments under sub. (3m) may not finally employ a
14 person in a position in which that person would have regular contact with the child
15 for whom those payments are being made or finally permit a person to be an adult
16 resident until the county department or, in a county having a population of 500,000
17 or more, the department of health and family services receives information from the
18 department of justice indicating that the person's arrest and conviction record under
19 the law of this state ~~is satisfactory according to the criteria specified in par. (g) 1. to~~
20 ~~3. and the county department or, in a county having a population of 500,000 or more,~~
21 ~~the department of health and family services so advises the person receiving~~
22 ~~payments under sub. (3m) does not include any arrest ~~for which or criminal charge~~~~
23 ~~is pending~~ or conviction that could adversely affect the child or the ability of the
24 person receiving payments to care for the child or until a decision is made under par.
25 (h) 4. to permit ~~a person who is receiving payments under sub. (3m) to employ a~~

ASSEMBLY BILL 201

SECTION 18

1 person in a position in which that person would have regular contact with the child
2 for whom payments are being made or to permit a ~~the~~ person to be so employed or
3 to be an adult resident ~~and the county department or, in a county having a population~~
4 ~~of 500,000 or more, the department of health and family services so advises the~~
5 ~~person receiving payments under sub. (3m).~~ A person receiving payments under sub.
6 (3m) may finally employ a person in a position in which that person would have
7 regular contact with the child for whom those payments are being made or finally
8 permit a person to be an adult resident conditioned on the receipt of information ~~from~~
9 by the county department or, in a county having a population of 500,000 or more, the
10 department of health and family services that from the federal bureau of
11 investigation ~~indicates~~ indicating that the person's arrest and conviction record
12 under the law of any other state or under federal law ~~is satisfactory according to the~~
13 ~~criteria specified in par. (g) 1. to 3~~ does not include any arrest for which a criminal
14 ~~charge is pending or conviction that could adversely affect the child or the ability of~~
15 the person receiving payments to care for the child.

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

17 48.57 (3p) (fm) 2m. A person receiving payments under sub. (3n) may
18 provisionally employ a person in a position in which that person would have regular
19 contact with the child for whom those payments are being made or provisionally
20 permit a person to be an adult resident if the person receiving those payments states
21 to the county department or, in a county having a population of 500,000 or more, the
22 department of health and family services that, to the best of his or her knowledge,
23 the employee or adult resident does not have any arrests ~~for which a criminal charge~~
24 ~~is pending~~ or convictions that could adversely affect the child or the ability of the
25 person receiving payments to care for the child. A person receiving payment under

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1 sub. (3n) may not finally employ a person in a position in which that person would
2 have regular contact with the child for whom those payments are being made or
3 finally permit a person to be an adult resident until the county department or, in a
4 county having a population of 500,000 or more, the department of health and family
5 services receives information from the department of justice ~~relating to the person's~~
6 indicating that the arrest and conviction record of the person under the law of this
7 state ~~and that record indicates either that the person has not been arrested or~~
8 ~~convicted or that the person has been arrested or convicted but~~ does not include any
9 ~~arrest for which a criminal charge is pending~~ or conviction that the director of the
10 county department or, in a county having a population of 500,000 or more, the person
11 designated by the secretary of health and family services to review arrest and
12 conviction records under this subdivision ~~determines that the conviction record is~~
13 ~~satisfactory because it does not include any arrest or conviction that is likely to~~
14 ~~adversely affect the child or the long-term kinship care relative's ability~~ of the person
15 receiving payments to care for the child ~~and the county department or department~~
16 ~~of health and family services so advises the person receiving payments under sub.~~
17 ~~(3n).~~ A person receiving payments under sub. (3n) may finally employ a person in
18 a position in which that person would have regular contact with the child for whom
19 those payments are being made or finally permit a person to be an adult resident
20 conditioned on the receipt of information ~~from~~ by the county department or, in a
21 county having a population of 500,000 or more, the department of health and family
22 services ~~that~~ from the federal bureau of investigation ~~indicates~~ indicating that the
23 person's arrest and conviction record under the law of any other state or under
24 federal law ~~is satisfactory because the conviction record does not include any arrest~~
25 ~~for which a criminal charge is pending~~ or conviction that the director of the county

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SECTION 19

1 department or, in a county having a population of 500,000 or more, the person
 2 designated by the secretary of health and family services to review arrest and
 3 conviction records under this subdivision determines is likely to adversely affect the
 4 child or the long-term kinship care relative's ability of the person receiving
 5 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.~~

6 SECTION ~~20~~[#] 48.57 (3p) (g) (intro.) of the statutes is amended to read:

7 48.57 (3p) (g) (intro.) Except as provided in par. (h), the county department or,
 8 in a county having a population of 500,000 or more, the department of health and
 9 family services may not make payments to a person applying for payments under
 10 sub. (3m) and a person receiving payments under sub. (3m) may not employ a person
 11 in a position in which that person would have regular contact with the child for whom
 12 those payments are being made or permit a person to be an adult resident if any of
 13 the following applies the person has been convicted or penalized as follows and if the
 14 county department or the department of health and family services determines that
 15 the conviction or penalty is likely to adversely affect the child or the ability of the
 16 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.~~

17 SECTION ~~21~~[#] 48.57 (3p) (h) 1. of the statutes is amended to read:

18 48.57 (3p) (h) 1. A person who is denied payments under sub. (3m) ~~for a reason~~
 19 specified in par. (g) 1., 2. or 3. based on the person's arrest or conviction record or a
 20 person who is prohibited from employing a person in a position in which that person

) a person whose payments under sub. (3m) are
discontinued based on the person's arrest or conviction record

ASSEMBLY BILL 201

or discontinuation

1 would have regular contact with the child for whom payments under sub. (3m) are
 2 being made from permitting a person to be an adult resident for a reason specified
 3 in par. (g) 1., 2. or 3. based on the person's arrest or conviction record may ^(plain) request
 4 that ^(plain) ~~petition the department for a review of~~ the denial of payments or the prohibition
 5 on employment or being an adult resident ^(plain) ~~be reviewed~~ under subd. 2. Review is
 6 ^(plain) ~~unavailable~~ if the ^(plain) ~~denial~~ ^(discontinuation) or prohibition occurred more than 45 days before
 7 submission of the ^(request) ~~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 ^(plain) ~~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 ^(plain) ~~arrest or~~
 conviction record on which the ^(discontinuation) ~~denial~~ or prohibition is based ^(check) ~~includes any arrests,~~
 convictions or penalties that are is likely to adversely affect the child or the ability
 of the ^(person) ~~kinship care relative petitioner~~ to care for the child. In reviewing the denial
 or prohibition, the ^(plain) ~~director of the county department,~~ the person designated by the

discontinuation

or discontinuation

Insert
17-15

ASSEMBLY BILL 201

SECTION 23

(plan)

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 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 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.

Insert 18-24

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~~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.~~

1 SECTION ~~26~~[#] 48.57 (3p) (hm) of the statutes is amended to read:

2 48.57 (3p) (hm) A county department or, in a county having a population of
3 500,000 or more, the department may not make payments to a person under sub. (3n)
4 and a person receiving payments under sub. (3n) may not employ a person in a
5 position in which that person would have regular contact with the child for whom
6 payments are being made or permit a person to be an adult resident if the director
7 of the county department or, in a county having a population of 500,000 or more, the
8 person designated by the secretary to review arrest and conviction records under this
9 paragraph determines that the person has any arrest ~~for which a criminal charge is~~
10 ~~pending~~ or conviction that is likely to adversely affect the child or the long-term
11 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.~~

12 SECTION ~~27~~[#] 48.57 (3r) of the statutes is created to read:

13 48.57 (3r) If the amounts in the appropriation under s. 20.435 (3) (kc) are
14 insufficient to provide payments under sub. (3m) (am) (intro.) or (3n) (am) (intro.) to
15 all persons who are eligible to receive those payments, the department may request
16 the secretary of administration under s. 16.515 to supplement that appropriation for
17 the purpose of increasing funding for those payments. Notwithstanding s. 16.515 (1),
18 the secretary of administration may supplement the appropriation under s. 20.435
19 (3) (kc) if all of the following occur:

ASSEMBLY BILL 201

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

4 (b) The joint committee on finance either does not schedule a meeting for the
5 purpose of reviewing the proposed supplementation within 14 working days after the
6 secretary of administration notifies the committee of the proposed supplementation
7 or, if the committee schedules a meeting for the purpose of reviewing the proposed
8 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.~~

9 SECTION ~~28~~[#] 48.57 (3t) of the statutes is amended to read:

10 48.57 (3t) Notwithstanding subs. (3m), (3n), and (3p), the department may
11 enter into an agreement with the governing body of a federally recognized American
12 Indian tribe or band to allow that governing body to administer the program under
13 subs. (3m), (3n), and (3p) within the boundaries of that reservation. Any agreement
14 under this subsection relating to the administration of the program under sub. (3m)

15 ~~shall specify the person with whom a request for review under sub. (3p) (h) 2. may~~
16 ~~be filed and the person who has been designated by the governing body to conduct~~
17 ~~the review under sub. (3p) (h) 3. and make the determination under sub. (3p) (h) 4.~~
18 ~~Any agreement under this subsection relating to the administration of the program~~
19 ~~under sub. (3m), (3n), and (3p) shall specify who is to make any determination as to~~
20 whether ~~a~~ an arrest and conviction record is satisfactory.

21 SECTION ~~29~~[#] 48.979 of the statutes is created to read:

ASSEMBLY BILL 201

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

3 (a) “Caregiver” means an individual who has attained 18 years of age with
4 whom a child resides. *has the meaning given in s. 146.81(1)*

5 (b) “Health care facility” has the meaning given in s. 155.01 (6).

6 (c) “Health care provider” ~~means any person licensed, registered, permitted, or~~
7 ~~certified by the department of health and family services or by the department of~~
8 ~~regulation and licensing to provide health services in this state.~~ *or nonemergency*

9 (d) “Health services” means any ~~primary or~~ emergency care, treatment,
10 service, or procedure to maintain, diagnose, or treat a physical or mental condition.

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

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

15 1. In writing.

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

18 3. Voluntarily executed.

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

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

who is not currently denied periods of physical placement with the child

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

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

HEALTH SERVICES CONSENT

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

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

ASSEMBLY BILL 201

with whom

1

AUTHORIZATION TO CONSENT

2

TO HEALTH SERVICES

3

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): is currently residing, to do the following for my child

4

5

6

A. ~~General~~ Health Services Consent and Exclusions:

, including surgery

7

Provide consent for emergency and nonemergency ~~routine~~ health services for the above-named child,

8

including medical and dental examinations and ~~nonemergency~~ prescribed

9

treatments ~~(for example, tooth repair, immunizations, and medications)~~, with the

10

following exceptions: (If there are no exceptions, write "none.")

11

.....

12

.....

13

~~B. Emergency Health Services Consent and Exclusions:~~

14

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

15

16

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

17

18

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.

19

20

3. All health services will be provided under the direction of a licensed dental

21

care provider or physician or other licensed health care provider as appropriate.

DI

B. Child's Health Care Records

Provide consent to the release of the above-named child's patient health care records.

ASSEMBLY BILL 201

the release of patient health care records

SECTION 29

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

4
5

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

10 Signature of parent Date
11 Name of parent (print)

STATEMENT OF CAREGIVER

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

19 Signature of Caregiver Date

CONTACT INFORMATION

21 A. Parent:

22 Name (print)
23 Home address Home telephone number
24 Work address Work telephone number
25 Other address (specify) Other telephone number

ASSEMBLY BILL 201

1 *B. Caregiver:*

2 Name (print)

3 Home address

Home telephone number

4 Work address

Work telephone number

5 Other address (specify)

Other telephone number

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

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

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

12 3. Executing a subsequent health services consent form.

13 (b) A health services consent form is not valid if the ~~parent~~ ^{child} no longer resides
14 with the caregiver.

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

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

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

ASSEMBLY BILL 201

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

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

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

*who is not currently denied periods of physical
placement with the child*

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

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

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

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

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

ASSEMBLY BILL 201

1 the voluntary consent of the parent, that the individual knows has been forged or
 2 substantially altered without the authorization of the child's parent, or that the
 3 individual knows has been revoked, with the intent to act contrary to the parent's
 4 wishes may be fined not more than \$500 or imprisoned for not more than 30 days or
 5 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.~~

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

8 49.155 (5) (a) An individual is liable for the percentage of the cost of the child
 9 care specified by the department in a printed copayment schedule except as provided
 10 in pars. (b), (c), and (d).

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

ASSEMBLY BILL 201

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

2 49.155 (5) (c) An individual who is receiving payments under s. 48.57 (3m) or
3 (3n) for providing care and maintenance for a child is not liable for a copayment for
4 the child.

5 (d) An individual who the department specifies, by rule, is not liable for a
6 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

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

8 880.08 (3) (am) (intro.) When the proposed ward is a minor, notice shall be
9 given as provided in s. 879.05 to all of the following persons, if applicable, except that
10 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).

11 SECTION 33. Nonstatutory provisions.

CHILDREN

children

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

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

(3) KINSHIP CARE FUNDING MANAGEMENT

ASSEMBLY BILL 201

1 the results of the study to the appropriate standing committees of the legislature in
2 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.~~

3

(END)

2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0206/lins
GMM.....

(INSERT 5-3)

SECTION 1. 48.57 (3m)⁺ (a) 1. of the statutes is renumbered 48.57 (3m) (a) 1r.

SECTION 2. 48.57 (3m)[✓] (a) 1d. of the statutes is created to read:

48.57 (3m) (a) 1d. "Arrest" has the meaning given in sub. (3p) (a) 2.[✓]

END OF INSERT

SECTION ~~3~~⁺ 48.57 (3m)[✓] (am) 2. of the statutes is amended to read:

48.57 (3m) (am) 2. The county department or department determines that the child meets one or more of the criteria specified in s. 48.13 or 938.13, that the child would be at risk of meeting one or more of those criteria if the child were to remain in his or her home, or, if the child is 18 years of age or over, that the child would meet or be at risk of meeting one or more of those criteria as specified in this subdivision if the child were under 18 years of age; or 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.

end insert

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.

(INSERT 5-17)

SECTION 4. 48.57 (3m)[✓] (d) 1. of the statutes is created to read.

48.57 (3m) (d) 1. That, if the payments are being discontinued on the grounds that the kinship care relative is no longer providing care and maintenance for the child, 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 of the notice of discontinuation.

(END OF INSERT)

(INSERT 6-21)

SECTION ~~5~~¹¹ 48.57 (3m) (g) 1. (intro.) of the statutes is amended to read:

48.57 (3m) (g) 1. (intro.) Upon receipt of a timely petition under par. (f) the department shall give the applicant or recipient 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 applicant or recipient and to the county department or subunit of the department whose ~~action or failure to act,~~ denial, or discontinuation is the subject of the petition. That county department or subunit of the department may be represented at the hearing. The department shall render its decision as soon as possible after the hearing and shall send a certified copy of its decision to the applicant or recipient and to the county department or subunit of the department whose ~~action or failure to act,~~ denial, or discontinuation 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 ~~action or failure to act,~~ denial, or discontinuation 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:

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 INSERT)

(INSERT 8-11)

~~SECTION 6.~~ 48.57 (3n) (a) 1. of the statutes is renumbered 48.57 (3n) (a) 1r.

~~SECTION 7.~~ 48.57 (3n) (a) 1d. of the statutes is created to read:

48.57 (3n) (a) 1d. "Arrest" has the meaning given in sub. (3p) (a) 2.

(END OF INSERT)

(INSERT 9-1)

~~SECTION 8.~~ 48.57 (3n) (d) 1. of the statutes is created to read:

48.57 (3n) (d) 1. That, if the payments are being discontinued on the grounds that an event specified in par. (am) 6. a. to f. has occurred, 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 of the notice of discontinuation.

(END OF INSERT)

(INSERT 9-20)

SECTION 9. 48.57 (3n) (g) 1. (intro.) of the statutes is amended to read:

48.57 (3n) (g) 1. (intro.) Upon receipt of a timely petition under par. (f) the department shall give the applicant or recipient 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 applicant or recipient and to the county department or subunit of the department whose ~~action or failure to act, denial, or discontinuation~~ is the subject of the petition. That county department or subunit of the department may be represented at the hearing. The department shall render its decision as soon as possible after the hearing and shall send a certified copy of its decision to the applicant or recipient and to the county department or subunit of the department whose ~~action or failure to act,~~

denial, or discontinuation 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 ~~action or failure to act,~~ denial, or discontinuation 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:

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 INSERT)

(INSERT 10-12)

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

48.57 (3p) (a) (intro.) In this subsection, ~~“adult resident”~~:

1. Adult resident means a person 18 years of age or over who lives at the home of a person who has applied for or is receiving payments under sub. (3m) or (3n) 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 person who has applied for or is receiving payments under sub. (3m) or (3n).

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.

SECTION 11. 48.57 (3p) (a) 2. of the statutes is created to read:

48.57 (3p) (a) 2. “Arrest” means an arrest for a violation for which the person arrested, if convicted, would be disqualified from receiving payments under sub. (3m) for a reason specified in par. (g) 1., 2., or 3.

(END OF INSERT)

(INSERT 17-15)

2m.

SECTION ~~12~~ 48.57 (3p) (h) 2m. of the statutes is created to read:

48.57 (3p) (h) 2m. If a person whose payments under sub. (3m) are being discontinued based on the person's arrest or conviction record requests a review before the date on which those payments are to be discontinued, those payments may not be discontinued, except as provided in subd. a. or b., until a decision is rendered after the review but payments made pending the review decision may be recovered by the county department or department if the discontinuation is upheld. Payments under sub. (3m) shall be discontinued if any of the following applies:

- a. The person is contesting a state law or a change in state law and not the determination of the payment made on the person's behalf.
- b. The person is notified of a change in his or her payments under sub. (3m) while the review decision is pending but the person fails to request a review of the change.

(END OF INSERT)

(INSERT 18-24)

SECTION ~~13~~ 48.57 (3p) (h) 4. of the statutes is amended to read:

48.57 (3p) (h) 4. If the director of the county department, the person designated by the governing body of the 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 determines that the arrest or conviction record on which the denial or discontinuation of payments or the prohibition on employment or being an adult resident is based does not include any arrests, convictions, or penalties that are likely to adversely affect the child or the ability of the ~~kinship care relative~~ person requesting the review to care for the child, 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 may approve the making of payments under sub. (3m) or may permit a person 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 permit a person to be an adult resident.

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.

SECTION 14. 48.57 (3p) (h) 5. of the statutes is amended to read:

48.57 (3p) (h) 5. A decision under this paragraph is not subject to review under ch. 227 par. (hg).

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.

SECTION 15. 48.57 (3p) (hg) of the statutes is created to read:

48.57 (3p) (hg) 1. If on review under par. (h) a denial or discontinuation of payments under sub. (3m) or a prohibition on employment or being an adult resident is upheld, the person who requested the review may petition the department under subd. 2. for a review of that denial, discontinuation, or prohibition. Review is unavailable if the denial, discontinuation, or prohibition arose more than 45 days before submission of the petition for review.

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, discontinuation, or prohibition is the subject of the petition. That county department or subunit of the department may

be represented at the hearing. The department shall render its decision as soon as possible after the hearing and shall send a certified copy of its decision to the applicant or recipient and to the county department or subunit of the department whose denial, discontinuation, 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, discontinuation, 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 sole issue in the petition concerns a change that affects an entire class of recipients and is the result of a change in state law.

c. 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.

Subd. 3.

3. If a person whose payments under sub. (3m) are being discontinued based on the person's arrest or conviction record requests a hearing before the date on which those payments are to be discontinued, those payments may not be discontinued, except as provided in ~~sub. 1. a. or b.~~ ^{sub. 3.} 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 discontinuation is upheld. The department shall promptly notify the county department of the county in which the person resides or, if the person resides in a county having a population of 500,000 or more, the subunit of the department administering kinship care in that county that

*

Sub. (3m)

the person has requested a hearing. Payments under ~~par. (a)(m)~~ shall be discontinued if any of the following applies:

a. The person is contesting a state law or a change in state law and not the determination of the payment made on the person's behalf.

b. The person is notified of a change in his or her payments under sub. (3m) while the hearing decision is pending but the person fails to request a hearing on the change.

4. The person requesting the hearing shall be promptly informed in writing if his or her payments under sub. (3m) are to be discontinued pending the hearing decision.

(END OF INSERT)

(INSERT A)

Introduction

kinship

+

This substitute amendment makes various changes relating to kinship care and long-term kinship care, under which certain relatives of a child who provide care and maintenance for the child and who meet certain other conditions are eligible to receive monthly payments from the county department of human services or social services (county department) or, in Milwaukee County, the Department of Health and Family Services (DHFS). Those changes include changes relating to eligibility for kinship care and long-term kinship care, the procedures for discontinuing kinship care or long-term care payments, copayment liability for child care provided for a kinship care or long-term kinship care relative, and funding of kinship care. The substitute amendment also changes the manner in which notice of a guardianship proceeding in which the proposed ward is a minor must be provided, creates a health services consent form that a parent may use to authorize a caregiver to consent to health services for the parent's child, and requests the Joint Legislative Council to study state laws regarding guardianship and legal custody of children and the rights and responsibilities of guardians and legal custodians of children.

Kinship care

Under current law, one of the conditions that must be met in order for a relative who is providing care and maintenance for a child to be eligible to receive kinship care payments is that the county department or DHFS must determine that the child meets a criterion for the child or juvenile in need of protection or services jurisdiction of the court assigned to exercise jurisdiction under the Children's Code and the

↓ Juvenile Justice Code ~~(juvenile court)~~, for example, the child has been the victim of abuse or neglect, or that the child would be at risk of meeting a criterion for that jurisdiction if the child were to remain in his or her home. X

This substitute amendment provides that a relative who is providing care and maintenance for a child is eligible to receive kinship care payments if the child has been living with a relative for two 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 health, safety, or welfare of the child.

Under current law, another condition that must be met in order for a relative who is providing care and maintenance for a child to be eligible to receive kinship care payments or long-term kinship care payments is that the county department or DHFS must conduct a background investigation of the relative, any employee or prospective employee of the relative who has or would have regular contact with the child, and any adult resident of the relative's home to determine if any of those individuals has any arrests or convictions that could adversely affect the child or the relative's ability to care for the child. Currently, a county department or DHFS may consider any arrest in making that determination.

This substitute amendment limits the arrests that a county department or DHFS may consider in determining eligibility for kinship or long-term kinship care payments to arrests for a crime against life or bodily security, a crime against sexual morality, or a crime against children, subject to certain exceptions, including an exception for an arrest for prostitution, patronizing a prostitute, or pandering that occurred 20 years or more before the background investigation.

Under current law, at least once every 12 months after a county department or DHFS begins making kinship care or long-term kinship care payments to a relative who is providing care and maintenance for a child, the county department or DHFS is required to determine if the relative is still eligible to receive those payments. If the relative is no longer eligible to receive those payments, the county department or DHFS is required to discontinue making those payments.

This substitute amendment requires a county department or DHFS to discontinue making kinship care or long-term kinship care payments effective immediately upon notice if the relative is no longer providing care and maintenance for the child and to discontinue making those payments not less than 10 days after providing notice of discontinuation if the payments are being discontinued on any other grounds.

Under current law, a relative whose application for kinship care payments is denied or whose kinship care payments are discontinued on any grounds other than arrest or conviction record may appeal that denial or discontinuation to DHFS while a relative whose application for kinship care payments is denied or whose kinship care payments are discontinued on the grounds of arrest or conviction record may request the director of the county department or, in Milwaukee County, a person designated by the secretary of health and family services to review the denial or discontinuation and determine whether the arrest or conviction could adversely affect the child or the relative's ability to care for the child.

This substitute amendment permits a determination by a director of a county department or, in Milwaukee County, a person designated by the secretary of health and family services upholding a denial or discontinuation of kinship care payments to be appealed to DHFS.

Under current law, if a relative whose kinship care or long-term kinship care payments are discontinued requests a hearing within 10 days after the date of notice of the discontinuation, those payments may not be discontinued until a decision is rendered after hearing, subject to certain exceptions and subject to the right of the county department or DHFS to recover those payments if the discontinuation is upheld.

This substitute amendment permits kinship care and long-term kinship payments to continue pending a decision rendered after hearing, in the case of a relative whose payments are discontinued on any grounds other than the grounds that the relative is no longer providing care and maintenance for the child, if the relative requests a hearing before the date on which the payments are to be discontinued. The substitute amendment does not, ^{change} current law regarding continuation of payments pending a decision rendered after hearing in the case of a relative whose payments are discontinued on the grounds that the relative is no longer providing care and maintenance for the child. ^{care}

Under current law, a person who is receiving kinship ^{care} or long-term kinship care payments and who is receiving a child care subsidy under the Wisconsin Works Program is liable for a percentage of the cost of the child care as specified by the Department of Workforce Development. This substitute amendment exempts a person who is receiving kinship ^{care} or long-term kinship care payments from that liability.

Finally, with respect to kinship care and long-term kinship care payments, the substitute amendment permits DHFS to request the secretary of administration to provide supplemental funding for those payments if the amounts appropriated for those payments are insufficient to provide those payments to all persons who are eligible to receive those payments and requires DHFS to study methods to manage the funding appropriated for kinship care payments in order to minimize the need for waiting lists for those payments.

Notice of guardianship proceeding

Under current law, if notice of a guardianship proceeding in which the proposed ward is a minor cannot be served personally on the proposed ward's spouse, parents, legal custodian, or physical custodian, or the proposed ward, if 14 years of age or over (interested party), notice of the proceeding must be given by mail, together with publication of the notice three times in a newspaper that is published in the county of the proceeding. This substitute amendment permits notice of a guardianship proceeding in which the proposed ward is a minor to be given by mail, together with *one* newspaper publication of the notice, when an interested party cannot be served personally.

Health services consent form

Under current law, a guardian of a child has the duty and authority to consent to major medical, psychiatric, and surgical treatment for the child and a legal

custodian of a child has the right and duty to provide ordinary medical and dental care for the child. In the absence of guardianship or legal custody, however, a person with whom a child resides (caregiver) does not have the authority to consent to health services for the child.

This substitute amendment creates a health services consent form that a parent may use to authorize a caregiver to consent to health services for the parent's child and to consent to the release of the child's patient health care records. Under the substitute amendment, a caregiver designated in a health services consent form has priority over all other individuals, other than a parent who is not currently denied periods of physical placement with the child, to make health care decisions as provided in the health services consent form. A health services consent form remains in effect for the time specified in the form, which may be for up to one year, may be revoked by the parent at any time, and is invalid if the child no longer lives with the caregiver. A health care provider or health care facility is immune from liability for complying with the decision of a caregiver that is made under a health services consent form and for acting contrary to a revocation of a health services consent form or a health services decision of a parent who is not currently denied periods of physical placement with the child, if the health care provider or health care facility does not have actual knowledge of the revocation or parent's decision. Similarly, a caregiver is immune from liability for making a decision in good faith under a health services consent form.

Guardianship and legal custody study

Finally, the substitute amendment requests the Joint Legislative Council to study state laws regarding guardianship and legal custody of children and the rights and responsibilities of guardians and legal custodians of children and, if the Joint Legislative Council conducts that study, to report its findings, conclusions, and recommendations to the legislature by January 1, 2005.

(END OF INSERT)

Malaise, Gordon

From: Sappenfield, Anne
Sent: Friday, January 23, 2004 10:27 AM
To: Malaise, Gordon
Subject: AB 201

S0206

Hi Gordon!

It was nice to see you at the open house. You all throw a good party!

Here are the changes for the sub. to AB 201:

1. Expand the definition of "caregiver" on p. 24, lines 24-25 to also include people to whom a parent entrusts the care of a child for any period of time. I haven't thought through the language, but maybe a version of the definition used in s. 48.981 would work.
2. On p. 25, lines 22-23, substitute "who is known to a health care provider to be available to consent" with "whom a health care provider knows is available to consent".
3. On p. 26, line 16, please look at that language to see if it works with the definition of "caregiver".
4. On p. 27, rewrites lines 12-14 as "I authorize the caregiver to exercise his or her authority to release the health care records of my child, _____, as provided above, with the following exceptions:"

Thanks!

Anne Sappenfield
Senior Staff Attorney
WI Legislative Council Staff