

2003 SENATE BILL 82

March 20, 2003 – Introduced by JOINT LEGISLATIVE COUNCIL. Referred to Committee on Health, Children, Families, Aging and Long Term Care.

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

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- 1 Council to study guardianship and legal custody, granting rule-making
2 authority, and providing penalties.
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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

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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.

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

2 1. (intro.) and amended to read:

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

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

11 48.57 **(3m)** (am) 1. b. The child has been living with the kinship care relative
12 for 2 years or longer, and the county department or department determines that the
13 child's parents have consented to the living arrangement and that the living
14 arrangement is not contrary to the health, safety, or welfare of the child.

SENATE BILL 82**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

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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., 2. and 3. 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., 5m., or 6. does not continue to exist, the
20 kinship care relative may petition the department under par. (g) for a review of that

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

3 2. 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 petition for review within 45 days
6 after the date on which those payments are discontinued.

7 3. 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., 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 7.** 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., ~~2.,~~ 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 8.** 48.57 (3m) (g) 2. of the statutes is amended to read:

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1 48.57 (3m) (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 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

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

3 4m. Subject to sub. (3p) (fm) 1m. and 2m., the long-term kinship care relative
4 states that he or she does not have any arrests for which a criminal charge is pending
5 or convictions that could adversely affect the child or the long-term kinship care
6 relative's ability to care for the child and that, to the best of the long-term kinship
7 care relative's knowledge, no adult resident, as defined in sub. (3p) (a), and no
8 employee or prospective employee of the long-term kinship care relative who would
9 have regular contact with the child has any arrests for which a criminal charge is
10 pending or convictions that could adversely affect the child or the long-term kinship
11 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.

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

14 48.57 **(3n)** (d) (intro.) The county department or, in a county having a
15 population of 500,000 or more, the department shall, at least once every 12 months
16 after the county department or department begins making payments under this
17 subsection, determine whether any of the events specified in par. (am) 6. a. to f. ~~have~~
18 has occurred. If any such ~~events have~~ event has occurred, the county department or
19 department shall discontinue making those payments after providing the long-term
20 kinship care relative whose payments are being discontinued with written notice of
21 that discontinuation not less than 10 days before the date on which those payments
22 are to be discontinued. The notice shall advise the long-term kinship care relative
23 of all of the following:

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

2 48.57 **(3n)** (d) 1. That the long-term kinship care relative may petition the
3 department under par. (g) for a review of that discontinuation by submitting a
4 petition for review within 45 days after the date on which those payments are
5 discontinued.

6 2. That, if the long-term kinship care relative submits a petition for review
7 under par. (g) before the date on which his or her payments are to be discontinued,
8 the long-term kinship care relative's payments may not be discontinued, except as
9 provided in par. (g) 2. a. or b., until a final decision is rendered on the petition for
10 review, but that payments made pending the decision may be recovered by the county
11 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.

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

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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

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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.** 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.** 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)~~

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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 17.** 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~~

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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 or 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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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

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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 request
4 that petition the department for a review of the denial of payments or the prohibition
5 on employment or being an adult resident ~~be reviewed under subd. 2.~~ Review is
6 unavailable if the denial or prohibition occurred more than 45 days before
7 submission of the petition for review.

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

9 48.57 **(3p)** (h) 2. Upon receipt of a timely petition under subd. 1., the
10 department shall give the petitioner reasonable notice and an opportunity for a fair
11 hearing. The department may make such additional investigation as it considers
12 necessary. Notice of the hearing shall be given to the petitioner and to the county
13 department or subunit of the department whose denial or prohibition is the subject
14 of the petition. That county department or subunit of the department may be
15 represented at the hearing.

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

17 48.57 **(3p)** (h) 3. ~~The director of the county department, the person designated~~
18 ~~by the governing body of a federally recognized American Indian tribe or band or, in~~
19 ~~a county having a population of 500,000 or more, the person designated by the~~
20 ~~secretary of health and family services shall review the denial of payments or the~~
21 ~~prohibition on employment or being an adult resident to determine if the arrest or~~
22 ~~conviction record on which the denial or prohibition is based includes any arrests,~~
23 ~~convictions or penalties that are is likely to adversely affect the child or the ability~~
24 ~~of the kinship care relative petitioner to care for the child. In reviewing the denial~~
25 ~~or prohibition, the director of the county department, the person designated by the~~

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

4 a. The length of time between the date of the arrest, conviction, or of the
5 imposition of the penalty and the date of the review.

6 b. The nature of the ~~violation~~ conviction or penalty and how that ~~violation~~
7 conviction or penalty affects the ability of the ~~kinship care relative~~ petitioner to care
8 for the child.

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

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

12 48.57 **(3p)** (h) 4. The department shall render its decision as soon as possible
13 after the hearing and shall send a certified copy of its decision to the petitioner and
14 to the county department or subunit of the department whose denial or prohibition
15 is the subject of the petition. The decision of the department shall have the same
16 effect as an order of the county department or subunit of the department whose
17 denial or prohibition is the subject of the petition. The decision shall be final, but may
18 be revoked or modified as altered conditions may require. The department shall deny
19 a petition for review or shall refuse to grant relief if any of the following applies:

20 a. The petitioner withdraws the petition in writing.

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

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

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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:

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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. (3n), (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:

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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.

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.

9 (d) “Health services” means any ordinary 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.

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AUTHORIZATION TO CONSENT
TO HEALTH SERVICES

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

A. Routine Health Services Consent and Exclusions:

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

.....
.....

B. Emergency Health Services Consent and Exclusions:

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

1. A reasonable effort will be made to contact me and secure my consent for needed emergency health services, including surgical procedures.
2. If I cannot be located within a reasonable time, the child’s caregiver has the authority to consent to emergency health services, including surgery performed.
3. All health services will be provided under the direction of a licensed dental care provider or physician or other licensed health care provider as appropriate.

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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

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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 minor 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

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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.

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

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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.

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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.**

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. 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 funding 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

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- 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)