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(FORM UPDATED: 08/11/2010)

**WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS**

2003-04

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on ... Children and Families (AC-CF)

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (May 2012)



DIVISION OF CHILDREN AND FAMILY SERVICES

Jim Doyle
Governor

Helene Nelson
Secretary

State of Wisconsin

Department of Health and Family Services

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MADISON WI 53708-8916

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www.dhfs.state.wi.us

Date: June 26, 2003
To: Assembly Committee on Children and Families
From: Kitty Kocol
Administrator
Re: 2003 Assembly Bill 201

I appreciate the opportunity to provide information from the perspective of the Department of Health and Family Services regarding the legislation recommended by the Special Committee on Relative Caregivers. I appreciate the efforts of the special committee on the many issues related to relatives caring for children in their extended family.

We are supportive of some aspects of the bill. However, because a major provision in the bill would increase costs to the state, counties and tribes, we are unable to support the bill as currently written. Our primary concerns are the following:

- The bill modifies the eligibility criteria so that a child need not be a child or juvenile in need of protection or services (CHIPS or JIPS).
- Under the bill, a county department or, in Milwaukee County, this Department must find, for purposes of determining eligibility for Kinship Care payments, that a child needs to be placed with the relative if the child has lived with the relative for two years or longer and the placement is voluntary and appropriate.

Wisconsin's Kinship Care Program was created to provide financial assistance to relatives for care and maintenance of children who have been adjudged to be in need of protection or services or who are at risk of being in need of protection or services. These proposed changes would alter the intent of the program and expand the population to include children who are not in need of protection or services.

The changes would increase the service population without increasing funding. This may result in an ineffective program that no longer serves children with greatest needs. As caseloads expand as a result of changed legislation, children who are or who may be at risk of being adjudged in need of protection or services could be placed on longer waiting lists behind children who are not at risk.

- The bill limits the arrests that a county department or the Department may consider in conducting a criminal background check to arrests for which a criminal charge is pending.

An agency must have the flexibility in determining if it is appropriate for a child to live with a relative. Arrests for certain offenses are an important part of the applicant's criminal background and a legitimate determinant of such appropriateness. Limiting such arrests to those for which criminal charges have been filed does not provide agencies with the discretion necessary to assure the safety of children.

- The bill requires that a county department or the Department 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 right to appeal the discontinuation and to receive payments pending a hearing to appeal the discontinuation decision.
- The bill also provides that a Kinship Care relative who receives notice that his or her payments are being discontinued may receive payments pending an appeal of the discontinuation decision of the relative requests a hearing before the date on which the payment is to be discontinued.

Kinship Care ineligibility is often discovered after the fact and termination may not be a prior planned activity as suggested by this language. For example, an agency may learn that a child no longer lives with the relative and hasn't for several months, but the family did not report this. If this is discovered within the last week of the month, and the agency generates Kinship Care payments the first of the month, ten-day notification would not be possible. According to the proposed legislation, the relative must receive another payment although he/she is clearly no longer eligible for the payment. Once the check is cashed, the local agency must try to recover the overpayments. Agencies have reported mixed success in collecting Kinship Care overpayments from relative caregivers.

Current law and administrative rule require that the payment continue if the relative requests an appeal of the decision within ten (10) after notification of the decision. We believe that this current policy provides adequate safeguards for relative caregivers, especially when it is clear that the relative is no longer eligible for a payment.

- The bill requires agencies to provide applicants who are denied kinship care payments on the basis of a conviction record the right to a fair hearing on the denial.

This proposed change allows the applicant to appeal a denial based on criminal background to the state Division of Hearing and Appeals rather than the local agency in his/her community. This means that the decision as to whether a specific criminal history would negatively affect a child would be made by attorneys rather than the local child welfare agency. It is the Department's position that decisions regarding a caregiver's history and its impact on the safety of a child should be made by child welfare professionals rather than attorneys.

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

We do not oppose this requirement on conceptual grounds. However, there are some legal and practical issues involved in that many health care providers will not accept such generic approval forms. Rather, they would require more specific approvals for individual treatment issues. In addition, the existence of such approval forms would complicate issues related to the authority and responsibilities of parents, legal custodians and guardians. Provisions for these legal statuses deal specifically with such issues as authority to consent to medical care.

The Department does support the following aspects of the proposed legislation: - -

- 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.

The Department supports this initiative since there is a great deal of confusion regarding the various types of guardianship. We would recommend that all guardianship options related to children be codified within Ch. 48. We would further recommend that, if a study is approved, that the Department be provided with the opportunity to participate on the study committee in both legal and programmatic capacities.

- Requires a county department or DHFS to determine that an applicant's conviction record is likely to adversely affect the child or the relative's ability to care for the child in order to deny payments on the basis of a conviction record. This change also applies to conviction records of employees of the relative and adult residents of the relative's home.

We support this proposal in part because it is a reflection of the intent of current statute and administrative rule. Currently, while certain criminal convictions can result in an automatic denial of a Kinship Care payment, the agency does have the authority, on appeal, to consider several factors in determining whether the relative may be eligible to receive a payment in spite of the convictions.

- Requires the Department to study methods to manage Kinship Care funding for Kinship Care payments in order to minimize the need for waiting lists for payments and to report the results of its study to the Governor and the Legislature by June 30, 2004.

We are not opposed to this provision. However, it should be noted that the Department has dedicated significant time to continual reviews of the Kinship Care program to determine if there are better ways to prevent the implementation of waiting lists. Given the nature of the program, the county and tribal operation of the program, and the funding available, we have determined that waiting lists are an unavoidable reality. In essence, then, this study has been ongoing since the program was initiated in 1997.

- The bill prohibits the Department of Workforce Development (DWD) from requiring relatives to pay a copayment for child care subsidies received on behalf of a child for whom the relative is receiving kinship care payments.

From a programmatic perspective, this proposed change makes sense in that the purpose of Kinship Care is to facilitate the financial ability of a relative to care for a child. Given the fact that the monthly payment is only \$215, requiring a relative to make a co-payment for child care can be rather burdensome. We have discussed this proposal with staff of the Department of Workforce Development and they are also in support of this change.

Again, thank you for the opportunity to provide comment on this legislation. Staff of this Division and I are available should you wish to discuss any of these issues in greater detail.

By Paula Brown, BPP, 7-7287, and Mark Mitchell, BPP 1-8316

bc: DCFS
Paula Brown, BPP
Mark Campbell, BPP
Therese Durkin, OLC
Bill Fiss, AO
Connie Klick, BPP
Paul Minkus, AO
Mark Mitchell, BPP
June Paul, BPP
Gary Radloff, SO





WISCONSIN LEGISLATIVE COUNCIL

Terry C. Anderson, Director
Laura D. Rose, Deputy Director

TO: MEMBERS OF THE ASSEMBLY COMMITTEE ON CHILDREN AND FAMILIES
FROM: Anne Sappenfield, Senior Staff Attorney
DATE: July 10, 2003

The attached memorandum discusses concerns that were raised regarding Assembly Bill 201, relating to kinship care and creating a health care services consent form, at the public hearing on June 26. Representative Kestell has asked Representatives Jeskewitz, Vukmir, and Krug to meet to discuss possible changes to the bill.

As always, if you have any questions or would like further information, please call me at 267-9485.

AS:rv



WISCONSIN LEGISLATIVE COUNCIL

Terry C. Anderson, Director
Laura D. Rose, Deputy Director

TO: REPRESENTATIVE STEVE KESTELL AND MEMBERS OF THE ASSEMBLY
COMMITTEE ON CHILDREN AND FAMILIES

FROM: Anne Sappenfield, Senior Staff Attorney

RE: 2003 Assembly Bill 201, Relating to Kinship Care and Creating a Health Services Consent
Form

DATE: July 10, 2003

This memorandum describes concerns regarding 2003 Assembly Bill 201, relating to kinship care and creating a health services consent form that were raised at the public hearing on the bill. Assembly Bill 201 was introduced by the Joint Legislative Council on March 25, 2003. The bill was referred to the Assembly Committee on Children and Families which held a public hearing on the bill on June 26, 2003.

THE KINSHIP CARE PROGRAM

Background

The kinship care program provides a payment of \$215 per month to eligible kinship care relatives who are providing care and maintenance for a child. [s. 48.57 (3m) (am), Stats.] "Kinship care relative" is defined as a stepparent, brother, sister, stepbrother, stepsister, first cousin, nephew, niece, aunt, uncle, or any person of a preceding generation as denoted by the prefix of grand, great, or great-great, whether by blood, marriage or legal adoption, or the spouse of any such person, even if the marriage is terminated by death or divorce. [s. 48.57 (3m) (a) 2., Stats.]

In 1996, the kinship care program was created by Wisconsin Act 289, which also created the Wisconsin Works (W-2) program. That act eliminated the Aid to Families with Dependent Children (AFDC) program, including the portion of the AFDC program that paid AFDC benefits to a nonlegally responsible relative (NLRR) who was providing care for a child. The kinship care program is generally viewed as replacing the AFDC-NLRR program; however, the eligibility criteria vary significantly.

The program is administered by the county departments of human or social services (county department) or, in Milwaukee County, the Department of Health and Family Services (DHFS). In

addition, DHFS may enter into an agreement with the governing body of a federally recognized American Indian tribe or band (tribe) to administer the program within the boundaries of the tribe's reservation. [s. 48.57 (3m) (am), Stats.]

Eligibility Criteria

Current Law

Among other eligibility criteria, in order to qualify for kinship care payments, a county department or DHFS must determine that the following conditions are met:

- a. There is a need for the child to be placed with the kinship care relative and placement with the kinship care relative is in the best interests of the child.
- b. The child meets one or more of the child or juvenile in need of protection or services (CHIPS or JIPS) criteria or would be at risk of meeting one or more of the CHIPS or JIPS criteria if the child were to remain in his or her home.¹

[s. 48.57 (3m) (am) 1. and 2., Stats.]

The Bill

Under the bill, a child does not need to be found to be CHIPS or JIPS or at risk of being CHIPS or JIPS in order for a relative to be eligible to receive kinship care payments. However, that factor may be considered in determining whether the child needs to be placed with the kinship care relative. The bill draft also specifies that a county department or DHFS must find that there is a need for the child to be placed with the kinship care relative if the county department or DHFS determines either of the following:

- a. The child is CHIPS or JIPS or at risk of being CHIPS or JIPS.
- b. 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 child's health, safety, or welfare.

Discussion

The provision of the bill relating to kinship care payment eligibility raises the following issues:

- a. By eliminating the requirement that the child be CHIPS or JIPS, or at risk of becoming CHIPS or JIPS, more relatives will be eligible to receive kinship care payments. It is impossible to know how many more relatives would be eligible and how many of those would apply for payments. However, it is very likely that the number of relatives who would apply and be determined eligible

¹CHIPS criteria are set forth in s. 48.13, Stats., and include such grounds as abandonment, abuse, or neglect; JIPS criteria are set forth in s. 938.13, Stats., and include such grounds as uncontrollable or runaway juveniles.

would increase under the bill. Concerns were raised at the hearing that the change would, therefore, increase the number of children on the kinship care waiting lists, increase pressure on the Legislature to provide more funding for the program, or impose pressure on counties to make payments to relatives using county money.

b. Requiring counties or DHFS to determine need without also having to determine whether the child is CHIPS or JIPS or at risk of being CHIPS or JIPS may make the eligibility determination more subjective and less uniform from county to county.

c. The kinship care program was designed and has been implemented to serve children who are CHIPS or JIPS or at risk of becoming so. The bill would change the nature of the program.

Criminal Background Investigation

Current Law

In determining eligibility for kinship care payments, a county department or DHFS must also conduct a criminal background investigation of all of the following in order to determine whether any have arrests or convictions that could adversely affect the child or the kinship care relative's ability to care for the child:

- a. The kinship care relative.
- b. The employees and prospective employees of the relative who have or would have regular contact with the child.
- c. Any other adult resident of the relative's home.

[s. 48.57 (3m) (am) 4., Stats.]

Kinship care payments must be denied if the kinship care relative has been convicted of certain crimes that are specified in the statutes. In addition, a kinship care relative is prohibited from employing anyone who would have regular contact with the child or from permitting any adult to be a resident of his or her home if the employee or adult has been convicted of such crimes. [s. 48.57 (3p) (g), Stats.]

A person who is denied kinship care payments or who is prohibited from employing a person or from permitting an adult to reside in his or her home because the person, employee, or adult resident has been convicted of any of these crimes may request a review of the denial or prohibition. The review is conducted by the director of the county department, the person designated by the governing body of the federally recognized tribe, or the person designated by the Secretary of DHFS. A denial of payments on the basis of a conviction or arrest for which payments must be denied may not be reviewed through the fair hearing process.

The review must include consideration of the following factors on a case-by-case basis:

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

b. The nature of the violation or penalty and how that violation or penalty affects the ability of the kinship care relative to care for the child.

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

If the reviewer determines that the record does not include any arrests, convictions, or penalties that are likely to adversely affect the child or the relative's ability to care for the child, the reviewer may approve kinship care payments or may permit the relative to employ the person or allow the person to be an adult resident in the home. [s. 48.57 (3p) (h), Stats., and s. HFS 58.08 (2) (a), Wis. Adm. Code.]

The Bill

The bill limits the arrests that may be considered in conducting a criminal background check for purposes of kinship care payment eligibility to arrests for which a criminal charge is pending.

The bill also 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.

Discussion

Concerns were raised at the public hearing that, because there is not a thorough investigation of kinship care applicants, if an arrest record raises doubts about the safety or appropriateness of the home, the county department or DHFS should be able to use that information in determining eligibility for kinship care payments.

Regarding the opportunity for a fair hearing on a decision to deny eligibility based upon a conviction or arrest, the following issues were raised:

a. The decision as to whether a criminal history would negatively affect a child would be made by attorneys rather than the local child welfare agency.

b. It is more convenient for kinship care payment applicants to make appeals to their own county.

c. There are good opportunities for review at the county level that should be utilized.

Discontinuation of Payments

Current Law

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. [s. 48.57 (3m) (d) and (g) 2. and (3n) (d) and (g) 2., Stats.]

Under current administrative rules, the county department or DHFS must provide a kinship care relative with notice that his or her payments are being discontinued. The notice must set forth the relative's right to appeal the discontinuation and right to continued payments pending appeal. [s. HFS 58.08 (1), Wis. Adm. Code.]

The Bill

The bill requires a county department or DHFS to notify a kinship care relative that his or her payments will be discontinued at least 10 days in advance. The notice must include notice of the kinship care relative's rights to appeal the discontinuation and to continued payments while the appeal is pending.

Under the bill, a kinship care relative must request a hearing before the date the payments are to be discontinued in order to receive payments pending the hearing decision.

Discussion

Concerns were raised that advance notice of payment discontinuation does not tie payments to eligibility, but instead requires payments for at least 10 days following a finding of ineligibility. According to DHFS, it is often difficult to recoup overpayments. In addition, DHFS commented that the current time limits for requesting a hearing in order to receive continued payments is adequate.

HEALTH SERVICES CONSENT FORM

Current Law

Under current law, generally only parents, guardians and legal custodians may consent to a minor's health care. Relatives who care for a child under an informal agreement with the child's parents may not legally obtain health care for the children in their care.

The Bill

The bill 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.

The bill 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 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.

The bill 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.

The bill 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.

Under the bill, a person who falsifies a health services consent form may be required to pay a forfeiture. A person who attempts to give consent under a form that the individual knows has been executed without the voluntary consent of the parent, that the individual knows has been forged or substantially altered without the parent's authorization, or that the individual knows has been revoked with the intent of acting contrary to the child's parent's wishes may be charged with a misdemeanor.

Discussion

The following concerns were raised concerning the health services consent form:

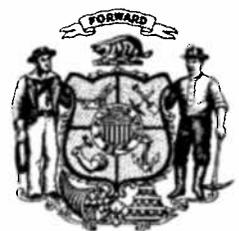
- a. Health care providers will not accept such a generic approval form.
- b. Issues as to who has decision-making authority for a child's health care will be complicated by use of the form.

If you have any questions, please feel free to contact me directly at the Legislative Council staff offices.

AS:rv;tlu



WISCONSIN STATE LEGISLATURE



OCONTO COUNTY



A Place For You

Department of Health and Human Services

..... promoting healthy and responsible families.

501 Park Avenue
Oconto, WI 54153-1612

920-834-7000
920-834-7045 (no voice response TDD)
920-834-6889 FAX

February 3, 2004

Steve Kestell, Chairperson
Attn: Committee on Children and Families
State Capitol
Room 17 West
P.O. Box 8952
Madison, WI 53708

Dear Chairperson Kestell:

RE: 2003 Assembly Bill 201

I am writing this letter of non-support on behalf of the Oconto County Health and Human Services Board of Directors.

This bill changes the eligibility criteria for Kinship Care benefits. This bill also changes the number of arrests that a county department may consider in determining eligibility to receive payments.

This will have a negative financial impact on the counties. This is another form of non-funded state mandates.

The negative impact of the bill out-weighs any possible benefits.

This bill will create growing waiting lists and dissatisfied citizens.

We strongly oppose the passage of this bill.

Thank you.

Sincerely,

Greg Benesh, Deputy Director
Oconto County Dept. of Health & Human Services

GB/jmz





WISCONSIN LEGISLATIVE COUNCIL

Terry C. Anderson, Director
Laura D. Rose, Deputy Director

TO: REPRESENTATIVE STEVE KESTELL, CHAIR, AND MEMBERS OF THE ASSEMBLY
COMMITTEE ON CHILDREN AND FAMILIES

FROM: *AS*
Anne Sappenfield, Senior Staff Attorney

RE: Assembly Substitute Amendment __ (LRBs0206/3) to 2003 Assembly Bill 201, Relating to
Kinship Care, Notice of Guardianship Proceedings, Creating a Health Services Consent
Form, and Requesting the Joint Legislative Council to Study Guardianship and Legal
Custody

DATE: February 18, 2004

This memorandum describes Assembly Substitute Amendment __ (LRBs0206/3) to 2003 Assembly Bill 201, relating to kinship care, notice of guardianship proceedings, creating a health services consent form, and requesting the Joint Legislative Council to study guardianship and legal custody. The bill was introduced by the Joint Legislative Council on March 25, 2003. The Assembly Committee on Children and Families held a public hearing on the bill on June 26, 2003 and is scheduled to take executive action on the bill on February 19, 2004.

The key changes the substitute amendment makes to the bill are as follows:

- Under the substitute amendment, in order to be eligible for kinship care payments, the child must be a child or juvenile in need of protection or services (CHIPS or JIPS) or at risk of being CHIPS or JIPS, as required under current law, or must have been living with the kinship care relative for two years or longer. In addition to these criteria, the child must also be found to need the placement. Under the bill, a child must be found to need the placement with the relative if he or she is CHIPS or JIPS, at risk of CHIPS or JIPS, or has been living with the relative for at least two years, but could be found to need the placement with the relative based upon other factors.
- Under the substitute amendment, in determining eligibility for kinship care payments, the county department or the Department of Health and Family Services (DHFS) may consider an arrest of the relative or an employee or adult resident of the relative's home for a felony drug crime, a crime against life or bodily security, a crime against sexual morality, or a crime

against children. Current law allows any arrest to be considered. The bill allows only the consideration of arrests for which a charge is pending.

- If a relative is determined ineligible for kinship care payments due to a conviction record, the substitute amendment allows the relative to request a review of that determination by the director of the county department or, in Milwaukee County, a person designated by the Secretary of DHFS, as under current law, but also allows applicants to appeal these reviews through a fair hearing. Under the bill, all denials may be appealed through a fair hearing.
- The substitute amendment requires a county department or DHFS to immediately terminate kinship care payments if it is determined that the relative is no longer providing care and maintenance for the child unless the child is outside the relative's home for 90 days or less with the intent of returning to the home. All other payment discontinuations require 10 days prior notice, as required under the bill.
- The substitute amendment provides that individuals who are eligible to receive kinship care payments are not responsible for a copayment under the Wisconsin Shares Program for child care services received on behalf of the child for whom they are providing care and maintenance. Under the bill, individuals who are receiving kinship care payments are not required to make a copayment.
- The substitute amendment allows a parent to complete a health care services form to give an adult who resides with a child or provides temporary or permanent care and supervision of a child the authority to make health care decisions for the child on behalf of the parent. The bill allows such authority to be transferred under the newly created form only to an adult with whom the child resides.
- The substitute amendment allows a caregiver to consent to the release of a child's patient health care records under a health care services consent form.

A. KINSHIP CARE PROGRAM

1. Background

The kinship care program provides a payment of \$215 per month to eligible kinship care relatives who are providing care and maintenance for a child. [s. 48.57 (3m) (am), Stats.] "Kinship care relative" is defined as a stepparent, brother, sister, stepbrother, stepsister, first cousin, nephew, niece, aunt, uncle, or any person of a preceding generation as denoted by the prefix of grand, great, or great-great, whether by blood, marriage or legal adoption, or the spouse of any such person, even if the marriage is terminated by death or divorce. [s. 48.57 (3m) (a) 2., Stats.]

The program is administered by the county departments of human or social services (county department) or, in Milwaukee County, DHFS. In addition, DHFS may enter into an agreement with the governing body of a federally recognized American Indian tribe or band (tribe) to administer the program within the boundaries of the tribe's reservation. [s. 48.57 (3m) (am), Stats.]

2. Eligibility Criteria

Current Law

Among other eligibility criteria, in order to qualify for kinship care payments, a county department or DHFS must determine that both of the following conditions are met:

- a. There is a need for the child to be placed with the kinship care relative and placement with the kinship care relative is in the best interests of the child.
- b. The child meets one or more of the CHIPS or JIPS criteria or would be at risk of meeting one or more of the CHIPS or JIPS criteria if the child were to remain in his or her home.¹

[s. 48.57 (3m) (am) 1. and 2., Stats.]

The Substitute Amendment

The substitute amendment modifies item b., above, and provides that, in order to be eligible for kinship care payments, the county department or DHFS must find that the child is CHIPS or JIPS or at risk of being CHIPS or JIPS or that the child has been living with the relative for two years or longer.

2. Criminal Background Investigation

Current Law

In determining eligibility for kinship care payments, a county department or DHFS must conduct a criminal background investigation of all of the following in order to determine whether any have arrests or convictions that could adversely affect the child or the kinship care relative's ability to care for the child:

- The kinship care relative.
- The employees and prospective employees of the relative who have or would have regular contact with the child.
- Any other adult resident of the relative's home.

[s. 48.57 (3m) (am) 4., Stats.]

Kinship care payments must be denied if the kinship care relative has been convicted of any of the following crimes or had any of the following penalties imposed in Wisconsin or under a similar law in another state or under federal law:

¹CHIPS criteria are set forth in s. 48.13, Stats., and include such grounds as abandonment, abuse, or neglect; JIPS criteria are set forth in s. 938.13, Stats., and include such grounds as uncontrollable or runaway juveniles.

- Felony conviction under the Uniform Controlled Substances Act. [ch. 961.]
- Penalties imposed for habitual criminality [s. 939.62]; certain domestic abuse offenses [s. 939.621]; use of a dangerous weapon [s. 939.63]; use of a bulletproof garment while committing a felony [s. 939.64]; concealing identity while committing a crime [s. 939.641]; and hate crime [s. 939.645].
- Convictions of a crime against life and bodily security [ch. 940]; *except* failure by a peace officer to render aid [s. 940.291]; and failure by an individual to aid a victim or report a crime [s. 940.34].
- Conviction of a crime against sexual morality [ch. 944]; *except* solicitation of drinks by an employee from a customer [s. 944.36]; and the following crimes if the violation was 20 or more years prior to the investigation: prostitution [s. 944.30]; patronizing prostitutes [s. 944.31]; and pandering [s. 944.33].
- Convictions of a crime against children [ch. 948]; *except* contributing to truancy [s. 948.45]; receiving property from a child [s. 948.63]; and tattooing a child [s. 948.70].

In addition, a kinship care relative is prohibited from employing anyone who would have regular contact with the child or from permitting any adult to be a resident of his or her home if the employee or adult has been convicted of such crimes or had such penalties imposed. [s. 48.57 (3p) (g), Stats.]

A person who is denied kinship care payments or who is prohibited from employing a person or from permitting an adult to reside in his or her home because the person, employee, or adult resident has been convicted of any of these crimes or had any of these penalties imposed may request a review of the denial or prohibition. The review is conducted by the director of the county department, the person designated by the governing body of the federally recognized tribe, or the person designated by the Secretary of DHFS. A denial of payments on the basis of a conviction or arrest for which payments must be denied may not be reviewed through the fair hearing process.

The review must include consideration of the following factors on a case-by-case basis:

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

If the reviewer determines that the record does not include any arrests, convictions, or penalties that are likely to adversely affect the child or the relative's ability to care for the child, the reviewer may approve kinship care payments or may permit the relative to employ the person or allow the person to be an adult resident in the home. [s. 48.57 (3p) (h), Stats., and s. HFS 58.08 (2) (a), Wis. Adm. Code.]

The Substitute Amendment

The substitute amendment makes several changes to criminal background investigations for the kinship care program.

First, the substitute amendment limits the arrests that may be considered in conducting a criminal background check for purposes of kinship care payment eligibility to arrests for the offenses for which a conviction is a bar to receiving kinship care payments, listed above.

The substitute amendment also requires a county department or DHFS to determine that a conviction is likely to adversely affect the child or the relative's ability to care for the child in order to deny payments on the basis of a conviction record. This change also applies to conviction records of employees of the relative and adult residents of the relative's home. Under this change, a finding that a person has a conviction for which payments must be denied under current law must be accompanied by a finding that the conviction is likely to adversely affect the child on the relative's ability to care for the child before payments may be denied.

Finally, the substitute amendment 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 review conducted by the county or DHFS. Appeals of denials based upon an arrest record are appealed directly through the fair hearing process.

3. Discontinuation of Payments

Current Law

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. [s. 48.57 (3m) (d) and (g) 2. and (3n) (d) and (g) 2., Stats.]

Under current administrative rules, the county department or DHFS must provide a kinship care relative with notice that his or her payments are being discontinued. The notice must set forth the relative's right to appeal the discontinuation and right to continued payments pending appeal. [s. HFS 58.08 (1), Wis. Adm. Code.]

The Substitute Amendment

Under the substitute amendment, if the county department or DHFS determines that the kinship care relative is no longer providing care and maintenance for the child, the county department or DHFS must discontinue payments immediately with notice, unless the child is outside the home of the relative for 90 days or less with the intent of returning to the home. If payments are discontinued for any other reason, the substitute amendment requires a county department or DHFS to notify a kinship care relative that his or her payments will be discontinued at least 10 days in advance. The notice must include notice of the kinship care relative's rights to appeal the discontinuation and to continued payments while the appeal is pending.

Under the substitute amendment, unless a kinship care relative's payments are being discontinued because the relative is no longer caring for the child, the relative must request a hearing before the date the payments are to be discontinued in order to receive payments pending the hearing decision. A relative whose payments are discontinued based on a determination that the relative is no longer caring for the child is not eligible for payments pending appeal.

4. Copayments for Child Care Subsidies

Current Law

Under current law, an individual who receives a child care subsidy under the Wisconsin Shares Program is liable for a percentage of the cost of the child care specified by the DWD in a printed copayment schedule. Current law specifies, however, that an individual who is under the age of 20 and is attending high school or participating in a course of study for granting a declaration of equivalency to high school graduation may not be determined liable for more than the minimum copayment amount. [s. 49.155 (5), Stats.]

Current administrative rules make the following additional exceptions to the copayment requirement for kinship care relatives:

- Kinship care relatives who are providing care for a child under court order do not have a copayment responsibility for the kinship care child in their care.
- Kinship care relatives who are providing care for a child without a court order are generally responsible for the minimum copayment.

[s. DWD 56.08 (2) (c) and (d), Wis. Adm. Code.]

The Substitute Amendment

The substitute amendment provides that an individual who is eligible to receive kinship care payments or long-term kinship care payments is not responsible for a copayment for child care services received on behalf of a child for whom they are providing care and maintenance. In addition, the substitute amendment provides that DWD may exempt others from copayment requirements by rule.

5. Funding

Current Law

Current law provides that kinship care payments are funded by a sum certain appropriation of federal Temporary Assistance for Needy Families funding. [s. 20.435 (3) (kc), Stats.]

DHFS places applicants on a waiting list and permits county departments and tribes to place applicants on waiting lists if the agency has expended its kinship care benefit allocation for the agency's fiscal year or has established a caseload which will result in the agency expending its allocation by the end of the year and has notified DHFS of the need for a waiting list.

DHFS's administrative rules state that an agency may prioritize applicants on the waiting list according to any of the following criteria, as described in the agency's written policy:

- The lack of stability in the living arrangement if a payment is not made.
- The order in which the applications are received.
- The level of urgency of the child's need, as defined for determining eligibility for payments, described above.
- If the child is under the guardianship of the kinship care applicant.

An applicant may not be placed on a waiting list if a court has ordered that the child be placed with the relative. (Approximately 25% of kinship care cases are court-ordered cases.) [s. HFS 58.12, Wis. Adm. Code.]

The Substitute Amendment

The substitute amendment permits DHFS to request the Secretary of Administration to provide supplemental funding for the kinship care program if the amount of funding is insufficient to provide kinship care and long-term kinship care 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.

The substitute amendment 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.

B. HEALTH SERVICES CONSENT FORM

1. Current Law

Under current law, generally only parents, guardians and legal custodians may consent to a minor's health care.

2. The Substitute Amendment

The substitute amendment creates a new section in the Children's Code that allows a parent to complete a form that gives a child's caregiver the authority to make health services decisions for the child on behalf of the parent. The substitute amendment defines "caregiver" as an adult who resides with a child or provides temporary or permanent care and supervision for a child.

The substitute amendment 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 DHFS determines is spoken by a significant number of state residents.

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

The substitute amendment 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.

The substitute amendment 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.

Under the substitute amendment, a person who falsifies a health services consent form may be required to pay a forfeiture. A person who attempts to give consent under a form that the individual knows has been executed without the voluntary consent of the parent, that the individual knows has been forged or substantially altered without the parent's authorization, or that the individual knows has been revoked with the intent of acting contrary to the child's parent's wishes may be charged with a misdemeanor.

C. NOTICE OF GUARDIANSHIP PROCEEDINGS

1. Current Law

Under current law, notice of a hearing to appoint a guardian for a minor must be published in a newspaper as a Class 3 notice (i.e., published three times) if personal service is not possible. [s. 880.08 (3) (am) (intro.), Stats.]

2. The Substitute Amendment

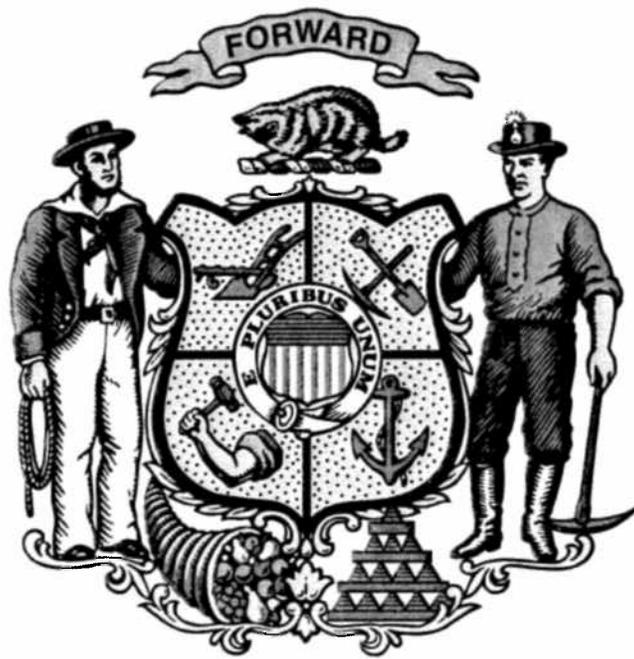
The substitute amendment requires such notice to be published as a Class 1 notice (i.e., published once).

D. LEGISLATIVE COUNCIL STUDY ON GUARDIANSHIP AND LEGAL CUSTODY

The substitute amendment includes a request that the JLC study state laws regarding guardianship and legal custody of minors and the rights and responsibilities of guardians and legal custodians.

If you have any questions, please feel free to contact me directly at the Legislative Council staff offices.

AS:jal:ksm



State of Wisconsin
JOINT LEGISLATIVE COUNCIL

Co-Chairs

ALAN LASEE
President, State Senate

STEVE WIECKERT
Representative, State Assembly



LEGISLATIVE COUNCIL STAFF

Terry C. Anderson

Director

Laura D. Rose

Deputy Director

TO: MEMBERS OF THE SPECIAL COMMITTEE ON RELATIVE CAREGIVERS

FROM: Terry C. Anderson, Director *TCA*

DATE: February 23, 2004

For your information, a hearing on 2003 Senate Bill 82, relating to kinship care, notice of guardianship proceedings, creating a health services consent form, requesting the Joint Legislative Council to study guardianship and legal custody, granting rule-making authority, and providing penalties, will be held on *Wednesday, February 25, 2004, at 8:30 a.m., in Room 300 Southeast, State Capitol, Madison*, by the Senate Committee on Health, Children, Families, Aging and Long Term Care.

You are welcome and encouraged to attend this hearing and to present testimony on this bill, which was recommended by the Special Committee. However, you should note that the Joint Legislative Council will not be able to reimburse public member expenses for attending a hearing, since it is not a meeting of the Special Committee. Written testimony is also appropriate and may be sent to:

Senator Carol Roessler, Chair
Senate Committee on Health, Children, Families, Aging and Long Term Care
P.O. Box 7882
Madison, WI 53707-7882

You have already received a copy of Wisconsin Legislative Council Report to the Legislature, RL 2003-05, dated March 28, 2003, which describes Senate Bill 82.

If you have any questions relating to the above, please feel free to contact Anne Sappenfield, at (608) 267-9485 or Philip Cardis, Staff Attorney, at (608) 267-0683.

TCA:ksm

Matzen, David

From: Roessler, Carol
Sent: Friday, February 20, 2004 4:43 PM
To: *Legislative All Senate; *Legislative All Assembly
Cc: Rose, Laura; 'rleonard@aol.com'; Alice O'Connor; Deb Sybell; Gary Radloff; Gary Radloff; J. D Chris Taylor (E-mail); Jeff Ranous; Jeremy Levin; Jodi Jensen (E-mail); John Hemes; Julie Swiderski; Laurie Kuiper; Lisa Maroney; Louie Schubert (E-mail); Mara Brooks (E-mail); Mark Grapentine; Maureen McNally; Michael Heifetz; Michele Mettner; Paul Merline (E-mail); Peter Theo; Ron Hermes; Sandra Lonergan; Snyder, MaryAnne
Subject: Public Hearing Notice: Committee on Health, Children, Families, Aging and Long Term Care

Senate

PUBLIC HEARING

Committee on Health, Children, Families, Aging and Long Term Care

The committee will hold a public hearing on the following items at the time specified below:

Wednesday, February 25, 2004
8:30 AM
300 Southeast

Clearinghouse Rule 03-082

Relating to minor changes to conform the rules to current practices and to correct oversights and problematic language in the current rules, especially related to the board's adoption of Part IV of the national exam in lieu of a state-administered exam to demonstrate clinical competence.

Senate Bill 82

(AB 201)

Relating to: kinship care, notice of guardianship proceedings, creating a health services consent form, requesting the Joint Legislative Council to study guardianship and legal custody, granting rule-making authority, and providing penalties.

By Joint Legislative Council.

An Executive Session will be held on Senate Bill 470 and may be held on any of the other items before the Committee.

Senator Carol Roessler
Chair





Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

February 24, 2004

TO: Senator Gwendolynne Moore
Room 415 South, State Capitol

FROM: Yvonne Onsager and Carri Jakel

SUBJECT: Assembly Substitute Amendment 1 to 2003 Assembly Bill 201 -- Estimated Effect on Kinship Care Eligibility and Costs

This memorandum discusses two possible changes to the eligibility requirements for the kinship care program, including: (a) the fiscal effect of eligibility changes to the kinship care program as proposed in Assembly Substitute Amendment 1 to 2003 Assembly Bill 201 (ASA 1 to AB 201); and (b) eligibility for children who have been with a relative for more than two years but were initially determined eligible for kinship care under the CHIPS/JIPS criteria.

Current Law

Under current law, the Department of Health and Family Services (DHFS) reimburses counties (other than Milwaukee County) for kinship care benefit payments counties make to eligible relatives. In Milwaukee County, DHFS makes these payments directly to eligible relatives. Kinship care relatives who provide care and maintenance for a child may receive a kinship care payment of \$215 per month if all of the following apply:

- The county or DHFS determine that there is a need for the child to be placed with the kinship care relative and that the placement is in the best interests of the child;
- The county or DHFS determines that the child meets one or more of the criteria for children in need of protection or services (CHIPS) or juveniles in need of protection or services (JIPS), or that the child would be at risk of meeting one or more of these criteria;
- The county or DHFS conducts a background investigation of the kinship care relative, any employee and prospective employee of the kinship care relative who has or would have regular contact with the child for whom kinship care payment would be made, and any other adult residing

in the kinship care relative's home to determine if the kinship care relative, employee, prospective employee, or adult resident has any arrests or convictions that could adversely affect the child or the kinship care relative's ability to care for the child;

- The kinship care relative cooperates with the county or DHFS in the application process, including applying for other forms of assistance for which the kinship care relative may be eligible; and
- The child for whom the kinship care relative is providing care and maintenance is not receiving supplemental security income (SSI) benefits.

At least every 12 months, the county or DHFS reviews the case of each relative that receives a kinship care payment to determine if the conditions under which the case was initially determined eligible still exist. If those conditions no longer exist, the county or DHFS discontinues making the kinship care payments.

Assembly Substitute Amendment 1 to Assembly Bill 201

ASA 1 would expand eligibility for kinship care payments so that a relative could be eligible to receive kinship care benefits for a child who has been living with the relative for two or more years, even if the child was not found to meet the CHIPS/JIPS criteria. This requirement would apply at the initial eligibility determination, as well as the annual case reviews.

To estimate the change in the number of eligible relatives for kinship care benefits, the reasons for denied applications for benefits and the reasons for case closures should be examined. Since the substitute amendment would change the eligibility requirements at both the initial eligibility determination, as well as the annual case reviews, more relatives would be found eligible for benefits when their applications are initially reviewed and that possibly fewer cases would be closed because they would now meet the eligibility requirements under the substitute amendment.

Denied Applications. In calendar year 2002, there were 4,996 applications for non-court ordered kinship care benefits statewide. Of these, 22.9% were denied (1,144 cases). The primary reasons for denial of benefits were no need for living arrangement (592), criminal record of caretaker (181), and criminal record of other in home (102). Six cases were denied because no CHIPS/JIPS risk was found. The following table shows the reasons why cases were denied and the number of cases denied by reason in Milwaukee County compared to the rest of the state.

**Non-Court Ordered Kinship Care Application Denials
Calendar Year 2002**

<u>Reasons for Denial</u>	<u>Milwaukee County</u>	<u>Balance of State</u>	<u>Statewide</u>
Criminal record of caretaker	168	13	181
Criminal record of other in home	86	16	102
Lack of cooperation	63	4	67
No CHIPS/JIPS risk	5	1	6
No need for living arrangement	577	15	592
Not in best interest of child	34	8	42
Other	77	17	94
Parent in home	15	10	25
SSI beneficiary	12	3	15
Child no longer living with relative	0	10	10
Child is over or has turned 18	0	1	1
Screen out - created in error	<u>0</u>	<u>9</u>	<u>9</u>
Total Denials	1,037	107	1,144
Total Applications	2,998	1,998	4,996
Percentage Denied	34.6%	5.4%	22.9%

Kinship care caseworkers can only specify one reason, regardless of the number of applicable reasons, why a kinship care application was denied. Therefore, even though six applications were specified as being denied in 2002 for a lack of a CHIPS/JIPS risk, it is possible that more than just these were denied for this reason. Therefore, to fully capture the possible effect of eligibility changes in the substitute amendment to AB 201, additional categories should be included in the fiscal analysis.

If it is assumed that the cases denied for reasons of "no CHIPS/JIPS risk," and "other" would be eligible for kinship care benefits under the substitute amendment, an additional 100 children would be eligible. These two categories are not specifically identified under the substitute amendment as being ineligible for kinship care benefits. Therefore, it is possible that there is a need for the child's placement with a relative within these categories and thus, the relative would be eligible for kinship care benefits.

Closed Cases. Under current law, once a child is initially determined to be eligible for kinship care, the relative receives a monthly benefit payment until the child is found to no longer be eligible. The substitute amendment would require counties to consider a child eligible for benefits if he or she has been living with a relative for two years or more. A CHIPS or JIPS or risk of CHIPS or JIPS finding does not need to be made. Therefore, the number of children who would continue to receive payments would also increase under the substitute amendment.

In 2002, 5,220 kinship care cases closed statewide. It is not known how many kinship care cases close because the children no longer meet the CHIPS or JIPS eligibility requirement. However, 816 cases closed in 2002 due to "other" reasons. For the purpose of preparing this estimate, it is assumed that in these cases, the child did not meet the "in the best interests of the child" or the CHIPS/JIPS requirements. According to the kinship care data that DHFS collects, of the closed cases, 30% of the children had been with the relative for more than two years. In 2002, this accounts for an estimated 245 children (30% of 816 cases) who would potentially still be eligible for kinship care under the substitute amendment.

In total, it is estimated that approximately 345 children would be eligible for kinship care benefits under the changes proposed in the substitute amendment. If all of these cases were to remain eligible for the entire year, the annual cost of making these additional kinship care payments would be approximately \$890,100 (345 children x \$215 per month x 12 months).

Alternative Proposal

Your office also proposed changing the eligibility requirements for kinship care such that a child would need to meet the CHIPS or JIPS criteria at the initial eligibility determination to be eligible for kinship care benefits, but at the annual case reviews, a relative caregiver would remain eligible for kinship care benefits if he or she cares for children who no longer meet the CHIPS or JIPS criteria but have been living with the relative for more than two years. This alternative eligibility proposal would reduce the number of additional potentially eligible relatives for kinship care benefits, as compared to the substitute amendment to AB 201, but would increase the number of eligible relatives as compared to current law. This change would not affect the cases that would be denied at the initial application, but would increase the cases that would continue to be eligible for benefits and thus, would not be closed.

The relatives of an estimated 245 children would remain eligible for kinship care benefits under this proposal. The estimated fiscal impact of this change to eligibility is \$632,100 annually. This is based on the methodology described above under the closed cases section of the fiscal effect of the substitute amendment to AB 201.

Funding

In 2003-04, \$22,467,600 PR is budgeted for kinship care benefits statewide. These benefits are supported with federal temporary assistance for needy families (TANF) funds, which are transferred from the Department of Workforce Development to DHFS.

ASA 1 to AB 201 would not provide additional funding for kinship care benefits. It would, however, allow DHFS to request supplemental TANF funding under s. 16.515 of the statutes for the kinship care program if the amount of funding budgeted for the program is insufficient to provide kinship care payments to all eligible relatives. The Joint Committee on Finance would then have 14 days to approve or deny the request or to schedule a meeting to review the request.

Federal TANF funds, in combination with other sources of federal and state funds, support a number of economic support programs, including Wisconsin Works (W-2), child care subsidies, caretaker supplement, the state earned income tax credit (EITC), and other support programs. In January, 2004, our office estimated the TANF balance to be \$11.3 million on June 30, 2005. However, it should be noted that based on current caseloads and expenditure levels, there are several areas in which there may be shortfalls in funding budgeted for TANF programs in the 2003-05 biennium. The projected shortfall in these programs totals \$13.2 million, including potential shortfalls in the EITC (\$9.0 million), the caretaker supplement (\$1.2 million), and the emergency assistance program (\$3.0 million). In addition, according to the Department of Workforce Development, the Menominee tribe may begin its own TANF program in 2004, which could reduce the state's federal TANF revenues by \$1.6 million in 2004-05. There is also some concern among local W-2 agencies that the 2004-2005 W-2 agency contracts may not include adequate funding.

As a result, any additional funding for an expansion of kinship care benefits would likely have to come from underspending in other programs currently funded by TANF revenues, which, at this time cannot be predicted. Further, going into the next biennium there is an estimated \$49.7 million structural deficit. This means that ongoing annual expenditures exceed ongoing annual TANF revenues by \$49.7 million. Therefore, any TANF balance at the end of this biennium would help to offset reductions in programs in the next biennium.

Under s. 48.57(3m)(am) of the statutes, DHFS and counties "shall make payments in the amount of \$215 per month to a kinship care relative who is providing care and maintenance for a child..." if the relative and child meet the kinship care eligibility requirements. However, because the provision refers to a sum-certain appropriation, this provision has been interpreted to imply that the total payment amounts are limited to the amounts the Legislature budgets for the program. This interpretation suggests that the Legislature could and should budget any amount for the program that it believes is appropriate to meet the program's objectives. This approach has been used in the past to estimate the statewide caseload and budget an amount that would fully support payment based on this caseload. This method is likely to result in some counties maintaining waiting lists for benefits payments but it also may effectively control state kinship care benefit costs because DHFS and counties may only expend their allocated amounts. Counties may, at their option, use local funds to supplement state funding allocations to fund benefits to all eligible caregivers.

Under this budgeting methodology, an increase in the caseload would increase the amount of funding that would need to be provided for the program. However, the Legislature could decide not to increase the funding for the program to reflect this eligibility change, in which case the number of individuals on a waiting list would likely increase and/or the number of cases that are supported by county-funded payments would increase.

Even if funding were increased for the program, counties may still have waiting lists for kinship care benefits. This is because the kinship care program is not structured or administered as a statewide benefits program with a single budget. Instead, counties receive annual allocations to support kinship care payments in that county. Although total funding for the program may be

sufficient on a statewide basis to support the kinship care program, individual counties and tribes may have surpluses and shortfalls in their kinship care budgets when their actual caseloads do not correspond with the initial allocations they receive.

By continuing to budget kinship care benefits costs as if there was a single, statewide budget for the program, some counties and tribes will continue to place eligible families on waiting lists, either because: (a) differences exist between initial allocations of funds among counties and the amount of funding each county needs to support actual caseloads in a calendar year; (b) counties reserve funding for court-ordered cases; or (c) the total funding budgeted for the program may be insufficient to support statewide actual program costs.

We hope you have found this information to be useful. Please contact us if you have additional questions.

YMO/CJ/sas





**WISCONSIN LEGISLATIVE COUNCIL
AMENDMENT MEMO**

2003 Senate Bill 82

**Senate Substitute Amendment
1, as Amended by Senate
Amendments 1 and 2**

Memo published: March 9, 2004

Contact: Anne Sappenfield, Senior Staff Attorney (267-9485)

2003 Senate Bill 82 was introduced by the Joint Legislative Council. The bill relates to kinship care, notice of guardianship proceedings, creating a health services consent form, and requesting the Joint Legislative Council to study guardianship and legal custody.

Senate Substitute Amendment 1 makes the following key changes to the bill:

- Under the substitute amendment, in order to be eligible for kinship care payments, the child must be a child or juvenile in need of protection or services (CHIPS or JIPS) or at risk of being CHIPS or JIPS, as required under current law, or must have been living with the kinship care relative for two years or longer. In addition to these criteria, the child must also be found to need the placement. Under the bill, a child must be found to need the placement with the relative if he or she is CHIPS or JIPS, at risk of CHIPS or JIPS, or has been living with the relative for at least two years, but could be found to need the placement with the relative based upon other factors.
- Under the substitute amendment, in determining eligibility for kinship care payments, the county department or the Department of Health and Family Services (DHFS) may consider an arrest of the relative or an employee or adult resident of the relative's home for a felony drug crime, a crime against life or bodily security, a crime against sexual morality, or a crime against children. Current law allows any arrest to be considered. The bill allows only the consideration of arrests for which a charge is pending.
- If a relative is determined ineligible for kinship care payments due to a conviction record, the substitute amendment allows the relative to request a review of that determination by the director of the county department or, in Milwaukee County, a person designated by the Secretary of DHFS, as under current law, but also allows applicants to appeal these reviews through a fair hearing. Under the bill, all denials may be appealed through a fair hearing.
- The substitute amendment requires a county department or DHFS to immediately terminate kinship care payments if it is determined that the relative is no longer providing care and maintenance for the child unless the child is outside the relative's home for 90 days or less

with the intent of returning to the home and the county department or DHFS has approved that temporary absence. All other payment discontinuations require 10 days prior notice, as required under the bill.

- The substitute amendment provides that individuals who are eligible to receive kinship care payments are not responsible for a copayment under the Wisconsin Shares Program for child care services received on behalf of the child for whom they are providing care and maintenance. Under the bill, individuals who are receiving kinship care payments are not required to make a copayment.
- The substitute amendment allows a parent to complete a health care services form to give an adult who resides with a child or provides temporary or permanent care and supervision of a child the authority to make health care decisions for the child on behalf of the parent. The bill allows such authority to be transferred under the newly created form only to an adult with whom the child resides.
- The substitute amendment allows a caregiver to consent to the release of a child's patient health care records under a health care services consent form.

Senate Amendment 1 removes the provision in the substitute amendment modifying the eligibility for kinship care payments under which a child must, among other requirements, be CHIPS or JIPS or at risk of CHIPS or JIPS, *or* must have been living with the kinship care relative for two years or longer. The amendment restores current law, under which the child must be CHIPS or JIPS or at risk of CHIPS or JIPS in order for a kinship care relative to be eligible for payments.

Senate Amendment 2 makes the following changes to the substitute amendment:

- Deletes the language requiring the Division of Hearings and Appeals (DHA) to render a decision on a denial or discontinuation of kinship care payments within 30 days. Instead, as under current law, DHA will be required to render its decision as soon as possible.
- A denial or discontinuation of payments on the basis of a person's conviction records may be reviewed by the county department or, in Milwaukee County, by a designee of the DHFS at the request of the kinship care applicant or recipient under current law and under the bill. The amendment requires this review to be completed within 30 days.
- The bill requires DHFS to study methods of managing kinship care funding in order to minimize waiting lists and report to the Legislature by June 30, 2004. The amendment requires DHFS to report by June 30, 2005.

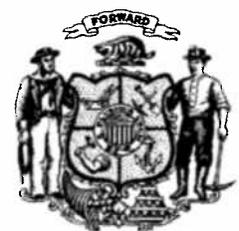
Legislative History

On March 4, 2004, the Senate Committee on Health, Children, Families, Aging and Long Term Care introduced and recommended adoption of Senate Amendment 1 to Senate Substitute Amendment 1 by a vote of Ayes, 6; Noes, 3; introduced and recommended adoption of Senate Amendment 2 to Senate Substitute Amendment 1 by a vote of Ayes, 9; Noes, 0; recommended adoption of Senate Substitute Amendment 1, as amended, by a vote of Ayes, 8; Noes, 1; and recommended passage of the bill, as amended, by a vote of Ayes, 7; Noes, 2.

LR:wu



WISCONSIN STATE LEGISLATURE



Fiscal Estimate Narratives

DWD 10/31/2003

LRB Number 03-2081/1	Introduction Number AB-201	Estimate Type Original
Subject		
Relative caregivers		

Assumptions Used in Arriving at Fiscal Estimate

This bill would require the Department to exempt kinship care relatives from being required to pay a co-payment for child care subsidies on behalf of a child for whom the relative is receiving kinship care payments. The bill would be effective upon its signing into law.

During the period of September 2002 through August 2003, there were 743 children who received child care subsidy support and were living with a kinship care relative who was responsible for a child care co-payment amount under DWD's Wisconsin Shares program. The minimum co-pay when for 1 child in certified care is \$2 each week and in licensed care is \$4 each week. These amounts change due to the number of children in a single household. The total co-payment amount for these children for that one year period was approximately \$12,000.

Currently the co-payments for Wisconsin Shares participants are not reflected in DWD appropriations. Waiving the co-payments would result in a commensurate increased expenditure in the appropriations from which subsidy payments are made. Although some increase could occur due to increased participation when no co-payment is required and these amounts were not anticipated in currently-budgeted funding for Wisconsin Shares, the fiscal impact is relatively minor in the context of the \$300 million annual funding for the Wisconsin shares program.

The Department of Health and Family Services has also indicated that the bill would significantly increase the number of children that would be eligible for Kinship Care benefits. In their fiscal estimate it is assumed that an additional \$83,190,000 would be needed annually to fully fund the increased population served. The funding is currently federal TANF funds which are specifically allocated through legislation and would require action by the Joint Committee on Finance to adjust the Kinship Care funding and decide which TANF funded program would need to be reduced or eliminated to support the increased funding to Kinship Care.

Long-Range Fiscal Implications

2 Questions

Allbers

How much funding remains available for draw in the TANF pot?

Can any of the other anticipated costs be covered by TANF or are the other costs noted on multiple fiscal notes.