

2003-04 SESSION
COMMITTEE HEARING
RECORDS

Committee Name:

Senate Committee on
Health, Children,
Families, Aging and
Long Term Care
(SC-HCFALTC)

Sample:

Record of Comm. Proceedings ... RCP

- 03hrAC-EdR_RCP_pt01a
- 03hrAC-EdR_RCP_pt01b
- 03hrAC-EdR_RCP_pt02

➤ Appointments ... Appt

➤ **

➤ Clearinghouse Rules ... CRule

➤ **

➤ Committee Hearings ... CH

➤ **

➤ Committee Reports ... CR

➤ **

➤ Executive Sessions ... ES

➤ **

➤ Hearing Records ... HR

➤ 03hr_sb0082b_pt01

➤ Miscellaneous ... Misc

➤ **

➤ Record of Comm. Proceedings ... RCP

➤ **

Co-authored
w/ Senator Moore
- medical

SENATE BILL 82

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.

eligibility
Criteria
Medical
Consent
refusal of child in
Self-Insurance
Kings
Jeske
Vukmir

• The companion bill, AB 201 passed the Committee on Children and Families (5aye and 2opposed and 1 absent) on Feb. 19th 2004. Amendments were adopted. *Issue of concern raised w/ P. my understanding was - still in*

• I have had a substitute amendment drafted to reflect the changes that were made in the Assembly Committee. **Anne Sappenfield prepared a Legislative Council memo on the sub. A copy is in your binder.**

• It is my understanding that the amendments adopted reflect changes that Rep. Vukmir, the State Medical Society and others have been working on over the last few months.

• There are some issues with the fiscal note. A DHFS note approximated the cost of the bill to be \$72.0 million. Fiscal Bureau testified at the Assembly hearing and said that they would have put the estimate closer to \$5.0 million. After the sub was adopted in Committee, Fiscal Bureau stated that they estimate the cost of the bill to be \$900,000. This is still a lot but nowhere near the original \$72 million estimate. **Evonne from the Fiscal Bureau is here to discuss their estimate. (F.B. paper in binder)**

• Rep. Jeskewitz had an amendment drafted that takes out the expansion of the Kinship Care program. This will eliminate most of the fiscal effect. She may try to get someone in JFC to introduce it or she may introduce it as a floor amendment. I have this amendment ready to go if you want to introduce it in Committee today.

Phil
conts

* Sen Moore unable to testify
* Carol Medaris from WCCF will be testifying.

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 and the county department or DHFS has approved the temporary absence. 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

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MEMO RE: **SB 82** as amended and passed by Assembly Committee on Children and Families (LRBs0206/4)

Among the more important changes made by the bill that will substantially improve the program for low-income families caring for relative children are:

1. **Children in the household for at least two years.** Currently all children must be at risk of meeting the criteria for children or juveniles in need of protection or services (CHIPS or JIPS), as well as other criteria, in order to be eligible for kinship care. **The bill as amended modifies this eligibility requirement so that children living with relatives for two or more years are eligible for kinship care without a finding that they meet CHIPS/JIPS requirements. They still must meet the requirement that the child needs the placement and it is in the best interest of the child.** Currently, many of these children continue to reside with relatives, even though they are denied the help of kinship care benefits. Others may go into foster care if relatives are unable to continue to care for the child without financial help.

It is estimated by the Fiscal Bureau that this change would cost approximately \$900,000 in TANF funds. The cost would be reduced if some children are placed on waiting lists as a result of this change.

2. **Criminal background checks.** Currently all applicant relatives must pass a criminal background check of themselves, any person living in their home or any person employed by them who would have regular contact with the child. They may be denied based solely upon having certain criminal convictions anytime in their past. **The bill as amended requires that before a person is denied on the basis of the criminal background check, the agency must find that the conviction is likely to adversely affect the child or the relative's ability to care for the child.** Currently kinship care relatives denied benefits because of the criminal background check may appeal only to the agency that initially made the decision. All other kinship care denials may request a fair hearing with the state Division of Hearings and Appeals. **The bill provides for fair hearings when local agencies deny benefits based upon a relative's conviction record.**
3. **Child care copayments.** **The bill provides that a relative who is eligible to receive kinship care benefits may receive child care services under the Wisconsin Shares program without a copayment.** Currently only those kinship care relatives providing care for a child under a court order are excused from any copayment; other kinship care relatives are responsible for the minimum copayment. (Note that this exception from liability would apply to those on waiting lists, because a relative does not have to be receiving kinship care payments in order to qualify for this exception.)

2003 SENATE BILL 82

[Link to Bill History](#)

March 20, 2003 - Introduced by Joint Legislative Council. Referred to Committee on Health, Children, Families, Aging and Long Term Care.

Pg1Ln1 **An Act** to repeal 48.57 (3p) (h) 5.; to renumber 48.57 (3m) (am) 2.; to renumber
Pg1Ln2 and amend 48.57 (3m) (am) 1., 48.57 (3m) (d), 48.57 (3n) (d) and 49.155 (5); to
Pg1Ln3 amend 48.57 (3m) (am) 4. and 4m., 48.57 (3m) (f), 48.57 (3m) (g) 2., 48.57 (3n)
Pg1Ln4 (am) 4. and 4m., 48.57 (3n) (f), 48.57 (3n) (g) 2., 48.57 (3p) (d), 48.57 (3p) (e) 4.,
Pg1Ln5 48.57 (3p) (fm) 1., 48.57 (3p) (fm) 1m., 48.57 (3p) (fm) 2., 48.57 (3p) (fm) 2m.,
Pg1Ln6 48.57 (3p) (g) (intro.), 48.57 (3p) (h) 1., 48.57 (3p) (h) 3., 48.57 (3p) (hm), 48.57
Pg1Ln7 (3t) and 880.08 (3) (am) (intro.); to repeal and recreate 48.57 (3p) (h) 2. and
Pg1Ln8 48.57 (3p) (h) 4.; and to create 48.57 (3m) (am) 1. b., 48.57 (3m) (d) 1., 2. and
Pg1Ln9 3., 48.57 (3n) (d) 1. and 2., 48.57 (3r), 48.979 and 49.155 (5) (c) and (d) of the
Pg1Ln10 statutes; relating to: kinship care, notice of guardianship proceedings,
Pg1Ln11 creating a health services consent form, requesting the Joint Legislative
Pg2Ln1 Council to study guardianship and legal custody, granting rule-making
Pg2Ln2 authority, and providing penalties.

Analysis by the Legislative Reference Bureau

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

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

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

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

Joint Legislative Council prefatory note: This bill was prepared for the Joint Legislative Council's Special Committee on Relative Caregivers. The special committee was directed to study: (1) current law relating to relative caregivers under the Children's Code and under current law relating to guardianship and kinship care; (2) relatives who care for children under an informal agreement between the child's parent and the relative

and whether such relatives should be granted decision-making authority with respect to the child's care; and (3) third-party visitation law and enforcement of third-party visitation orders.

The bill does the following:

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

S 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.

S 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.

S 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.

S 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.

S Requires a county department or DHFS to determine that a kinship care relative's conviction record is likely to adversely affect the child or the relative's ability to care for the child in order to deny payments on the basis of the conviction record. This change also applies to conviction records of employees of the relative who would have regular contact with the child and adult residents of the relative's home.

S 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.

S 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.

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


S 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.


SB82, s. 1 

Pg3Ln1

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

Pg3Ln2

1. (intro.) and amended to read:

SB82, s. 1 - continued 

Pg3Ln3

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

Pg3Ln4


Pg3Ln5

Pg3Ln6

Pg3Ln7

Pg3Ln8

Pg3Ln9

SB82, s. 2 

Pg3Ln10

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

SB82, s. 2 - continued 


Pg3Ln11

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

Pg3Ln12

Pg3Ln13

Pg3Ln14

SB82, s. 3 

Pg4Ln1

Section 3. 48.57 (3m) (am) 2. of the statutes is renumbered 48.57 (3m) (am)

Pg4Ln2

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.

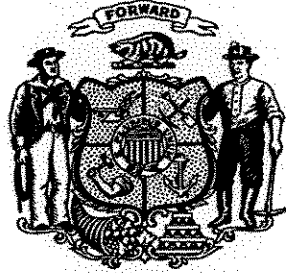
Also, under **Section 2**, if a child has been living with a relative for 2 years or longer and the county department or DHFS determines that the child's parents have consented to the living arrangement and that the living arrangement is not contrary to the child's health, safety, or welfare, the county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

FEB 23 2004

State of Wisconsin
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TO: MEMBERS OF THE SENATE COMMITTEE ON HEALTH, CHILDREN,
FAMILIES, AGING AND LONG TERM CARE

FROM: Terry C. Anderson, Director *TCA*

RE: Hearing on 2003 Senate Bill 82

DATE: February 23, 2004

Enclosed, for your information, is a copy of Wisconsin Legislative Council Report to the Legislature, RL 2003-05, dated March 28, 2003. This report describes the recommendations of the Joint Legislative Council's Special Committee on Relative Caregivers.

The following recommendation of the Special Committee has been referred to your committee:

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.

Senate Bill 82 is scheduled to be considered by your committee at its hearing which will be held on **Wednesday, February 25, 2004, beginning at 8:30 a.m., in Room 300 Southeast, State Capitol.**

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

TCA:ksm

Enclosure



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	0	2	2
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

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

TO: SENATOR CAROL ROESSLER, CHAIR, AND MEMBERS OF THE SENATE COMMITTEE ON HEALTH, CHILDREN, FAMILIES, AGING AND LONG-TERM CARE

FROM: Anne Sappenfield, Senior Staff Attorney

RE: Senate Substitute Amendment __ (LRBs0379/2) to 2003 Senate Bill 82, 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 24, 2004

This memorandum describes Senate Substitute Amendment __ (LRBs0379/2) to 2003 Senate Bill 82, 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 Senate Committee on Health, Children, Families, Aging and Long-Term Care is scheduled to hold a public hearing on February 25, 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

Handwritten notes:
 - Yes Low
 - Res. 77003
 - Middle ground
 - needs to be
 - CHIPS or JIPS
 - but @ 4+
 - 2 yr. rev.
 - if child
 - no longer
 - CHIPS
 - keep
 - payments

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.

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.]

Dept + Counties okay with
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.]

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:ksm:jal

Public
Hearing

2/25/01

SB 82 Kinship Care

Rep. Kestell written testimony

- Co-chaired w/ Sen. Moore leg. Council committee that developed recommendations

→ Appt. task force to work out problems w/ bill.

- He is figuring out what needs to be tweaked.

- eligibility, criteria.

- Health Consent form developed.

- Krug, Jaskewitz, Utkin on task force - Moore at table + med. Sol.

Drane Welsh - DHFS - into. only
+ Paula Brown

- Reg. changing expansion of eligibility of program.

- as long as caring for child 2 yrs - qualifies

them for kinship care - Amendment CR

has would fit this. → greatly expands the program.

- Craig Thompson - opposed

- amendment would satisfy concerns. - he

thinks - but he hasn't seen it.

Carl Medeiros Supports - written testimony
- kinds of families that get into a sit.
where child is not @ risk.

CR asked to have separate paper from leg.
Council explaining diff. between kinship care +
foster care. Anne response - a lot of foster care
regs. are federally driven.

Evonne + Ken, HB.

Commenting on HB, of sub.

TASHA (identical to Sen. Sub 1)

- 345 children eligible vs. current law.

Cost - \$890.00

**REMARKS OF REPRESENTATIVE STEVE KESTELL, CO-CHAIR, SPECIAL COMMITTEE ON
RELATIVE CAREGIVERS, TO THE SENATE COMMITTEE ON HEALTH, CHILDREN,
FAMILIES, AGING AND
LONG-TERM CARE**

February 25, 2004, in Room 300 Southeast, State Capitol

Thank you for the opportunity to describe the provisions of Senate Bill 82. The bill was recommended by the Special Committee on Relative Caregivers which I chaired with Senator Moore.

The Special Committee was established to study current law affecting relative caregivers, including laws relating to the kinship care program and guardianship. Also, the committee was directed to study decision-making authority of relatives caring for children under an informal arrangement with the child's parents.

I will describe the bill as amended by the proposed substitute amendment (LRBs0386/2). Senate Bill 82 is a companion bill to Assembly Bill 201. The Assembly Committee on Children and Families, which I chair, recommended adoption of a substitute amendment to that bill last week and Senator Roessler has had an identical substitute amendment drafted to the Senate version. The substitute amendment is the product of a working group I appointed to address concerns that were raised about the bill. I support the substitute amendment and feel that it does not change the study committee's intent for the legislation.

The majority of the bill relates to the kinship care program. Under this program, relatives caring for a child in their home receive a monthly payment of \$215 if they meet the eligibility criteria.

One of the eligibility criteria is that the child must be a child in need of protection or services (CHIPS or JIPS) or at risk of being CHIPS or JIPS. Committee members and individuals testifying before the committee raised concerns about families in which the child's conditions do not rise to the level of a CHIPS or JIPS ground but where the child really should be living with the relative instead of a parent.

The bill provides that a county department or DHFS must find that a child is CHIPS or JIPS or at risk of being CHIPS or JIPS or that the child needs the placement if the child has been living with the relative for at least two years in order for the relative to receive kinship care payments. The county department and DHFS must also find that the child needs to be placed with the relative and that the placement is in the child's best interest, as under current law.

Also, the bill makes the following changes to criminal background investigations in the kinship care program:

- Currently, there are certain criminal convictions for which kinship care payments *must* be denied, under current law. Under the bill, a county department or DHFS must additionally find that such a criminal conviction

is likely to adversely affect the child or the kinship care relative's ability to care for the child before payments may be denied.

- Under the bill, only arrests for these specified criminal offenses may be considered. Currently, kinship care payments may be denied or discontinued on the basis of any arrest that the county department or DHFS finds would adversely affect the child or the kinship care relative's ability to care for the child.
- Finally, denials of kinship care payments on the basis of certain convictions may be appealed through the fair hearing process under the bill. Currently, a person who is denied payments for this reason is not entitled to a fair hearing of the denial. Instead, a review is conducted by the director of the county department or a person designated by DHFS. Under the bill, the finding at the review may be appealed through a fair hearing.

Under the bill, if kinship care payments will be discontinued, the county department or DHFS must provide notice of payment discontinuation 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 receive payments pending a hearing to appeal the discontinuation decision under the bill unless payments are discontinued because the child is no longer with the relative. In that case, payments must be discontinued immediately unless the child is absent from the home for 90 days or less with the intent

of returning and the county department or DHFS has approved the temporary absence. Current administrative rules describe what discontinuation notices must contain but do not specify when notice must be given.

Relating to the Wisconsin Shares Program, the Department of Workforce Development (DWD) is prohibited in the bill from requiring relatives to pay a copayment for child care subsidies received on behalf of a child for whom the relative is eligible to receive kinship care payments. Currently, kinship care relatives caring for a child under a court order are exempt from the copayment requirement, but all other kinship care relatives must make the minimum copayment.

Finally, in response to concerns about waiting lists for kinship care payments, the bill permits DHFS to request supplemental funding for the kinship care program if funding for kinship care payments is insufficient. In addition, DHFS is required 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.

Several provisions of the bill address more general concerns of relative caregivers. First, the bill creates a health services consent form that can be completed by a parent to allow an adult who provides care and supervision of a child to make emergency and

nonemergency medical decisions for the child and to consent to the release of the child's patient health records.

In addition, the Joint Legislative Council is requested to study guardianship and legal custody in Wisconsin and the rights and responsibilities of guardians and legal custodians.

Notice requirements for the appointment of a guardian are also modified in the bill. Under current law, if personal service of the notice is not possible, the notice must be published in a newspaper three times. This can be a big expense, especially if the notice must be published in another state. Therefore, the bill requires that such notice be published once.

Again, thank you. I will answer any questions you have.



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MEMORANDUM

TO: Honorable Members of the Senate Committee on Health, Children, Aging
and Long Term Care

FROM: Craig Thompson, Legislative Director *CT*

DATE: February 25, 2004

SUBJECT: Testimony on Senate Bill 82

The Wisconsin Counties Association thanks you for the opportunity to provide brief comments on Senate Bill 82, relating to kinship care.

The bill makes several changes to current law regarding kinship care benefits, including modifying the eligibility criteria so that a child does not need to be a child or juvenile in need of protection or services (JIPS or CHIPS) in order for a kinship care relative to receive payments. In addition, a county department of human or social services 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 two years or longer and the placement is voluntary and appropriate.

Our concern with this legislation lies with the fact that under the bill, over 30,000 children and their caregivers will be eligible for kinship care funding, with no increase in state funds to make the payments. While WCA realizes that counties may place families on waiting lists (with the exception of court-ordered kinship care cases), passage of this legislation will create an expectation of service and increased pressure on counties to fund those cases that qualify for payments, yet are not receiving payments due to the lack of state funding. According to the fiscal estimate prepared by the Department of Health and Family Services (DHFS), approximately \$76 million would be needed statewide to fully fund all kinship care cases.

The Wisconsin Counties Association strongly believes that the state should not provide false hope for families by promising them a service / payment that we know the state cannot follow through on. Rather, the state should only provide the level of services to its citizens that the citizens of this state can afford.

Thank you for considering our comments.



FEB 26 2004



February 25, 2004

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

Re: SB 82 (as amended to conform to ASA 1 to AB 201)
Relating to the Kinship Care program

Dear Senator Roessler,

At the hearing this morning, you asked how "need" was defined for purposes of the requirement that children must "Carol MedarisPage 1 2/25/04need the placement" in order to be found eligible for kinship care. Chapter HFS 58 of the Wisconsin Administrative Code contains the rules for the kinship care program, and "need" is defined in sec. HFS 58.10 of that rule as follows:

HFS 58.10 Eligibility criteria. Before approving an application for a kinship care payment, an agency shall determine that all of the following criteria are met:

(1) (NEED OF THE CHILD). (a) The child needs the kinship living arrangement. The agency shall determine that the child needs the kinship living arrangement by determining at least one of the following:

1. The child's need for adequate food, shelter and clothing can be better met with the relative than with the child's parent or parents.
2. The child's need to be free from physical, sexual or emotional injury, neglect or exploitation can be better met with the relative than with the child's parent or parents.
3. The child's need to develop physically, mentally and emotionally to his or her potential can be better met with the relative than with the child's parent or parents.
4. The child's need for a safe or permanent family can be better met with the relative than with the child's parent or parents.

As was indicated in testimony at the hearing, the child's "need" for the placement would still have to be found under either 1) the Substitute Amendment as passed by the Assembly, which would not require a finding that the CHIPS/JIPS criteria had ever been met for children after two years in the relative's household, or (2) under the proposed compromise language that would not require a finding that the CHIPS/JIPS criteria were still being met, after such a finding had once been made, for children after two years in the relative's household.

I hope this helps clarify the issue as you look at SB 82.

Thank you for your attention,



Carol W. Medaris
Senior Staff Attorney

cc. Committee members
Anne Sappenfield, Legislative Council
Representative Steve Kestell
Representative Suzanne Jeskewitz
Senator Gwendolynne Moore



**SENATE COMMITTEE ON HEALTH, CHILDREN, FAMILIES,
 AGING AND LONG-TERM CARE**

**Hearing on SB 82 (as amended to conform to ASA 1 to AB 201):
 Relating to the Kinship Care program**

Testimony by Carol W. Medaris
 Senior Staff Attorney

February 25, 2004

I appear today for the Wisconsin Council on Children and Families in support of SB 82 (as amended to conform ASA 1 to AB 201 and passed by the Assembly Committee on Children and Families). The Council is a statewide, nonprofit, nonpartisan child advocacy organization that works to improve the health and well-being of children and their families, particularly vulnerable children. As part of that work I served on the Legislative Council's Special Committee on Relative Caregivers, co-chaired by Representative Steve Kestell and Gwendolynne Moore, to help draft the bill before you today. This bill makes a number of improvements to the kinship care program.

The kinship care program provides a monthly benefit of \$215 for children who live with relatives instead of their parents for a variety of reasons. For example,

- a parent may be incarcerated or incapacitated by alcohol or other drug abuse;
- a parent may be a teenager and unprepared for the responsibilities of motherhood, who determines that her child would be better cared for by her own mother;
- a parent may believe that a child cannot live safely with other household members;
- a family may be evicted and children sent elsewhere until stable, adequate and affordable housing may be found;
- a parent and relative may agree that the relative is better able to provide necessary supervision to a rebellious teenager.

Adult Bureau

Formerly these children were supported through the AFDC program. Once AFDC ended, the kinship care program was formed to separate these families from those parent-headed families in the W-2 program.

Since the program began, a number problems have become apparent, as evidenced by mothers and relatives testifying before the Special Committee as well as advocates who represent relatives contesting benefit denials. Changes proposed in AB 82 help resolve some of those problems.

1. **Children in the household for at least two years.** Currently all children must be at risk of meeting the criteria for children or juveniles in need of protection or services (CHIPS or JIPS), as well as other criteria, in order to be eligible for kinship care. **The bill modifies this eligibility requirement so that children living with relatives for two or more years are eligible for kinship care without a finding that they meet CHIPS/JIPS requirements. They still must meet the requirement that the child needs the placement and it is in the best interest of the child.**

The Special Committee heard testimony about relatives denied benefits for children who have lived with them for years, often since birth, when the children's parents have never provided for them but still are not deemed totally unable to provide for their care in the future. Benefits are currently denied regardless of where the children's best interests lie and whether there is a need for the placement.

In most cases relatives denied kinship care benefits continue to care for the children, often to the financial detriment of the other children and family members in the home. Sometimes these children end up in foster care (at substantially increased public cost) when the relative is simply unable to provide for the child without financial help.

It is estimated by the Fiscal Bureau that this change in eligibility for children who have lived with the relative for at least two years would cost approximately \$900,000 in TANF funds. The cost would be reduced if some children are placed on waiting lists as a result of this change.

2. **Criminal background checks.** Currently all applicant relatives must pass a criminal background check of themselves, any person living in their home or any person employed by them who would have regular contact with the child. They may be denied based solely upon having certain criminal convictions anytime in their past. **The bill prevents a denial of benefits based upon a criminal background check unless the agency first finds that the conviction is likely to adversely affect the child or the relative's ability to care for the child.**

The list of convictions that result in denials of benefits now is very long, and generally applies regardless of how long ago the conviction occurred.

Before you automatically terminate the case needs to be looked @. Counts to minor foster care.

And, the denial of benefits is automatic unless the relative files for a review. There is no initial determination of the best interests of the children in these cases.

Neither is there any requirement that children be removed from the home because of these past criminal convictions. As with the children discussed in the previous section, most relatives denied because of the criminal background check continue to care for the children regardless of the financial hardship they bear as a result.

A second problem with criminal background checks occurs because relatives denied benefits on this basis may appeal only to the agency that initially made the decision. All other kinship care denials may request a fair hearing with the state Division of Hearings and Appeals. **The bill provides for fair hearings when local agencies deny benefits based upon a relative's conviction record.**

It is fair and just to provide an objective, unbiased forum – one less connected with the initial decision – as embodied in the fair hearing process accorded all other kinship care appeals.

- 3. Child care copayments.** The Wisconsin Shares program provides child care subsidies for adults who need child care in order to work. Currently only those kinship care relatives providing care for a child under a court order are excused from any copayment; other kinship care relatives are responsible for the minimum copayment. **The bill provides that a relative who is eligible to receive kinship care benefits may receive child care services under the Wisconsin Shares program without a copayment.**

child care payment

It is important to note that this exception from liability would apply to those on waiting lists, because a relative does not have to be receiving kinship care payments in order to qualify for this exception. It would also apply to those who do not wish to receive kinship care benefits – those families who can manage to provide for their relative children as long as their child care needs are met.

In conclusion: Kinship care relatives perform a very valuable service to children and families in Wisconsin. As of December 2002, there were 8,750 children living with relatives and receiving kinship care benefits because their parents were unable or unwilling to care for them. These are primarily children in very vulnerable families with problems frequently exacerbated by poverty. It is sound public policy to provide the support necessary and appropriate so that these children are not further separated from their families when relatives are able and will to provide care.



**SENATE COMMITTEE ON HEALTH, CHILDREN, FAMILIES,
AGING AND LONG-TERM CARE**

**Hearing on SB 82 (as amended to conform to ASA 1 to AB 201):
Relating to the Kinship Care program**

Testimony by Carol W. Medaris
Senior Staff Attorney

February 25, 2004

I appear today for the Wisconsin Council on Children and Families in support of SB 82 (as amended to conform ASA 1 to AB 201 and passed by the Assembly Committee on Children and Families). The Council is a statewide, nonprofit, nonpartisan child advocacy organization that works to improve the health and well-being of children and their families, particularly vulnerable children. As part of that work I served on the Legislative Council's Special Committee on Relative Caregivers, co-chaired by Representative Steve Kestell and Gwendolynne Moore, to help draft the bill before you today. This bill makes a number of improvements to the kinship care program.

The kinship care program provides a monthly benefit of \$215 for children who live with relatives instead of their parents for a variety of reasons. For example,

- a parent may be incarcerated or incapacitated by alcohol or other drug abuse;
- a parent may be a teenager and unprepared for the responsibilities of motherhood, who determines that her child would be better cared for by her own mother;
- a parent may believe that a child cannot live safely with other household members;
- a family may be evicted and children sent elsewhere until stable, adequate and affordable housing may be found;
- a parent and relative may agree that the relative is better able to provide necessary supervision to a rebellious teenager.

Formerly these children were supported through the AFDC program. Once AFDC ended, the kinship care program was formed to separate these families from those parent-headed families in the W-2 program.

Since the program began, a number of problems have become apparent, as evidenced by mothers and relatives testifying before the Special Committee as well as advocates who represent relatives contesting benefit denials. Changes proposed in AB 82 help resolve some of those problems.

1. **Children in the household for at least two years.** Currently all children must be at risk of meeting the criteria for children or juveniles in need of protection or services (CHIPS or JIPS), as well as other criteria, in order to be eligible for kinship care. **The bill modifies this eligibility requirement so that children living with relatives for two or more years are eligible for kinship care without a finding that they meet CHIPS/JIPS requirements. They still must meet the requirement that the child needs the placement and it is in the best interest of the child.**

The Special Committee heard testimony about relatives denied benefits for children who have lived with them for years, often since birth, when the children's parents have never provided for them but still are not deemed totally unable to provide for their care in the future. Benefits are currently denied regardless of where the children's best interests lie and whether there is a need for the placement.

In most cases relatives denied kinship care benefits continue to care for the children, often to the financial detriment of the other children and family members in the home. Sometimes these children end up in foster care (at substantially increased public cost) when the relative is simply unable to provide for the child without financial help.

It is estimated by the Fiscal Bureau that this change in eligibility for children who have lived with the relative for at least two years would cost approximately \$900,000 in TANF funds. The cost would be reduced if some children are placed on waiting lists as a result of this change.

2. **Criminal background checks.** Currently all applicant relatives must pass a criminal background check of themselves, any person living in their home or any person employed by them who would have regular contact with the child. They may be denied based solely upon having certain criminal convictions anytime in their past. **The bill prevents a denial of benefits based upon a criminal background check unless the agency first finds that the conviction is likely to adversely affect the child or the relative's ability to care for the child.**

The list of convictions that result in denials of benefits now is very long, and generally applies regardless of how long ago the conviction occurred.

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And, the denial of benefits is automatic unless the relative files for a review. There is no initial determination of the best interests of the children in these cases.

Neither is there any requirement that children be removed from the home because of these past criminal convictions. As with the children discussed in the previous section, most relatives denied because of the criminal background check continue to care for the children regardless of the financial hardship they bear as a result.

A second problem with criminal background checks occurs because relatives denied benefits on this basis may appeal only to the agency that initially made the decision. All other kinship care denials may request a fair hearing with the state Division of Hearings and Appeals. **The bill provides for fair hearings when local agencies deny benefits based upon a relative's conviction record.**

It is fair and just to provide an objective, unbiased forum – one less connected with the initial decision – as embodied in the fair hearing process accorded all other kinship care appeals.

3. **Child care copayments.** The Wisconsin Shares program provides child care subsidies for adults who need child care in order to work. Currently only those kinship care relatives providing care for a child under a court order are excused from any copayment; other kinship care relatives are responsible for the minimum copayment. **The bill provides that a relative who is eligible to receive kinship care benefits may receive child care services under the Wisconsin Shares program without a copayment.**

It is important to note that this exception from liability would apply to those on waiting lists, because a relative does not have to be receiving kinship care payments in order to qualify for this exception. It would also apply to those who do not wish to receive kinship care benefits – those families who can manage to provide for their relative children as long as their child care needs are met.

In conclusion: Kinship care relatives perform a very valuable service to children and families in Wisconsin. As of December 2002, there were 8,750 children living with relatives and receiving kinship care benefits because their parents were unable or unwilling to care for them. These are primarily children in very vulnerable families with problems frequently exacerbated by poverty. It is sound public policy to provide the support necessary and appropriate so that these children are not further separated from their families when relatives are able and will to provide care.

Eligible for Kinship Care

Put into Wisconsin Kinship Care w/o copayment

Contact Detail

Helz, Joyce
2565 Kaitlynn Dr
Oshkosh, WI 54901-0710

Office: (920) 236-4619

Contact Date: 02/26/2004

Contact Type:

Summary: SB 82

Issue:

Position:

Description: -----Original Message-----

From: Helz, Joyce [mailto:JHelz@co.winnebago.wi.us]
Sent: Wednesday, February 25, 2004 5:34 PM
To: 'sen.roessler@legis.state.wi.us'
Subject: SB82

Senator Roessler,
Carol, I understand that a SB82 hearing was held today. I have written to you previously regarding my concerns about a few of the proposed changes to the Kinship Care program which are included in this bill. For practical purposes I will not reiterate the content of my past letter. I do, however, want to re-state my strong opposition to changing the eligibility criteria for Kinship to no longer requiring that children be at risk of neglect or abuse under 48.57(3m(am)). Eliminating the requirement that children be at risk of neglect or abuse without making the kinship program a sum sufficient program will result in more children being placed on waiting list around the state due to insufficient funding. I continue to believe that Kinship funding should be reserved for the most vulnerable children- those at risk of neglect and abuse.

Recently I received a kinship inquiry from a grandparent who has a grandchild living with her here in Oshkosh as the mother works two jobs in Milwaukee. Grandmother is essentially providing child care for the child. Grandmother indicates that her daughter is a good parent and that the grandchild has never been neglected or abused. The child's mother comes to grandmother's home on the weekend to see her child. If the proposed language in SB 82 remains the same, a request such as this would result in Winnebago County needing to approve this grandmother for kinship funding because the child lives here with the Grandmother seven days a week.

I believe the proposed language under 48.57(3m) (am) will create scenarios which allow family members to circumvent welfare reform by placing their child/ren with extended family so that kinship funding can be made available to the grandparent or other family members who are not working or where the parent is not willing to meet the requirements of the W-2 program.

With the proposed language we would also need to approve children for kinship care who live with a grandparent for the convenience of the grandparent or the parent.

I maintain that if there is concern regarding those situations where a child who has lived with a grandparent for several years, no longer meets the criteria of being at risk of neglect or abuse, then language allowing for continued funding for these children needs to be added to the statute without removing the original criteria of neglect or abuse for initial eligibility.

Contact Detail

If the proposed language remains in this bill I would request that adequate funding also be attached to this legislation so as to fund all new request for Kinship Care which are a result of this change.

Please contact me at 920-236-4619 if you have questions or would like to discuss this further.

Thank you.

Joyce M. Helz, Social Worker
Kinship/Access Unit
Winnebago County Department of Human Services
PO Box 2646
Oshkosh, WI 54903-2646

File: S:\DOCS\Intern\Bruce\Letter draft\4-2 sb82.doc

Status: Done

Closed Date: 03/05/2004

Assigned: Halbur, Jennifer

Owner: Halbur, Jennifer

Note **Note Date:** 03/05/2004

Summary: JH called Joyce

Contact Type:

Description: I called Joyce and let her know that the Senate Health Committee removed the language from SB 82 that was of concern to her.

Note **Note Date:** 04/02/2004

Summary: BC sent update

Contact Type:

Description:

WISCONSIN STATE SENATE



Carol Roessler
STATE SENATOR

April 2, 2004

Joyce Helz
2565 Kaitlynn Dr
Oshkosh WI, 54901-0710

Dear Joyce,

Now that the 2003-2004 legislative session is over I am providing you with an update regarding 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.

SB 82 was introduced and referred the Senate Committee on Health, Children, Families, Aging and Long Term Care March 20, 2003. A public hearing was held on February 25, 2004. The bill passed Committee 7-2 March 4, 2004. No further action was taken. I have included the bill history for you to review, which details the movement of this bill through the Legislature. This information is also available on the Wisconsin Legislature online database named Folio, accessible by visiting <http://folio.legis.state.wi.us>

Thank you for contacting me on this issue and I look forward to hearing your comments, questions, or concerns in the future.

Sincerely,

CAROL ROESSLER
State Senator
18th Senate District

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