

**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_pt02

➤ Miscellaneous ... Misc

➤ **

➤ Record of Comm. Proceedings ... RCP

➤ **



WISCONSIN LEGISLATIVE COUNCIL
REPORT TO THE LEGISLATURE

SPECIAL COMMITTEE ON
RELATIVE CAREGIVERS

March 28, 2003

RL 2003-05

**SPECIAL COMMITTEE ON RELATIVE CAREGIVERS
REPORT TO THE LEGISLATURE**

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March 28, 2003

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PART I

KEY PROVISIONS OF COMMITTEE RECOMMENDATIONS

The Special Committee on Relative Caregivers recommends the following proposal to the Joint Legislative Council for introduction in the 2003-04 Session of the Legislature. Assembly Bill 201 (and its companion bill Senate Bill 82).

2003 ASSEMBLY BILL 201 AND 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

- Makes the following changes to current law relating to the kinship care program:
 - ◆ 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 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 two years or longer and the placement is voluntary and appropriate.
 - ◆ Limits the arrests that a county department or DHFS may consider in conducting a criminal background check for purposes of kinship care payment eligibility to arrests for which a criminal charge is pending.
 - ◆ Requires a county department or DHFS to provide notice of discontinuation of kinship care payments to a relative at least 10 days before the payments are to be discontinued along with notice of the relative's rights to appeal the discontinuation and to receive payments pending a hearing to appeal the discontinuation decision.
 - ◆ Provides that a kinship care relative who receives notice that his or her payments are being discontinued may receive payments pending a hearing to appeal the discontinuation decision if the relative requests a hearing before the payments are to be discontinued.
 - ◆ 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.

- ◆ Requires DHFS to provide applicants who are denied kinship care payments on the basis of a conviction record the right to a fair hearing to appeal the denial.
 - ◆ Prohibits the Department of Workforce Development (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.
 - ◆ Permits DHFS to request supplemental funding for the kinship care program if funding for kinship care payments is insufficient.
 - ◆ Requires DHFS 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.
- 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.
 - 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 three times), if personal service is not possible.
 - 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.

PART II

COMMITTEE ACTIVITY

ASSIGNMENT

The Joint Legislative Council (JLC) established the Special Committee on Relative Caregivers and appointed the co-chairs by a May 22, 2002 mail ballot. 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.

Membership of the Special Committee, appointed by a July 15, 2002 mail ballot, consisted of one Senator, three Representatives, and eight public members. A list of committee members is included as *Appendix 3* to this report.

SUMMARY OF MEETINGS

The Special Committee held five meetings at the State Capitol in Madison on the following dates:

August 8, 2002

December 4, 2002

September 3, 2002

January 24, 2003

October 30, 2002

August 8, 2002: The committee heard testimony from several invited speakers. Susan Dreyfus, Administrator, Division of Children and Family Services, DHFS, described how her division addresses the needs of relative caregivers and the kinship care program. Mary Brintnall-Peterson, Professor, University of Wisconsin (UW)-Extension, discussed data relating to relative caregivers based on the most recent census and surveys conducted by the UW-Extension. Gene Hotchkiss, a grandparent who adopted his granddaughter, described obstacles he and his wife encountered in caring for their granddaughter while their daughter maintained legal custody. He advocated for legislation that would give legal custody to a relative with whom a child resides for a specified amount of time. Carol Gapen, an attorney with Stafford Rosenbaum, LLP, who practices children's law described problems relative caregivers face because they do not have standing in many legal proceedings or authority to consent to medical care. Patti Seger, Policy Development Coordinator, Wisconsin Coalition Against Domestic Violence, described issues relating to relative caregivers in families experiencing domestic violence.

September 3, 2002: The committee heard a presentation by Julie Poehlmann, Assistant Professor of Human Development and Family Studies, UW, relating to her research on the relationship between incarcerated mothers, their young children, and the caregivers of the young children. The committee also discussed possibilities for legislation that would confer

authority to relatives caring for children informally to make medical and education decisions for the children in their care.

October 30, 2002: The committee heard presentations from several invited speakers discussing the kinship care program. Susan Dreyfus, DHFS, said DHFS recommends amending current law to require county kinship care programs to inform all court-ordered relative caregivers of the option to be licensed as foster parents because licensed foster parents have access to a number of services including training and support to the home and child. Patricia Delessio, an attorney with Legal Action of Wisconsin, recommended amending state law to allow kinship care payments in cases where the child has lived with the relative since an early age or for a substantial period of time after considering, such as the child's best interests, parental involvement, the relationship that has developed between the relative and the child and the likelihood that the parent will assume responsibility for the child. She also recommended changes to criminal background investigations, notice when payments are terminated, and providing fair hearings when payments are denied due to a conviction record. Micabil Diaz-Martinez, the Legal Director of the American Civil Liberties Union of Wisconsin Foundation, spoke as one of the attorneys currently representing the children of Milwaukee in a class action against DHFS with respect to the foster care system in Milwaukee County. Mr. Diaz-Martinez said that there is a need for more foster parents and kinship care relatives to care for children who are victims of abuse and neglect. The committee also heard from two parents whose children have been cared for by a relative. Following the presentations, the committee had an extensive discussion about WLC: 0013/1 relating to health care agents for parents of a minor. The committee made a number of changes to the draft. The committee also concluded that changes to current law regarding allowing relatives to enroll children in school were unnecessary as current case law generally permits the child to go to school where the child lives.

December 4, 2002: The committee requested staff to prepare bill drafts revising the eligibility criteria for the kinship care program and making modifications to the provisions of the kinship care program statutes relating to criminal background checks and termination of payments. In addition, the committee concluded that the Legislature should further study the issue of how to define the responsibilities and authority of physical custodians, legal custodians, and guardians and committee members asked staff to draft legislation requesting the JLC to establish a committee to study this issue.

January 24, 2003: The committee voted to approve 11 bill drafts, with minor amendments. The committee decided not to consider a bill draft that would require counties to provide relative caregivers the opportunity to become foster parents. Committee members speaking on behalf of counties said that it would be too expensive for counties to make foster care payments to relatives who are not willing to care for additional foster children.

PART III

RECOMMENDATION INTRODUCED BY THE JOINT LEGISLATIVE COUNCIL

This part of the report provides background information on, and a description of, the drafts recommended by the Special Committee on Relative Caregivers for introduction in the 2003-04 Session of the Legislature.

2003 ASSEMBLY BILL 201 AND 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

Kinship Care Program

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.

In December 2002, kinship care payments, including long-term kinship care payments, were made on behalf of 8,750 children, including 5,392 children in Milwaukee County.

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.]

Eligibility Criteria

Background

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.]

Description

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:

- The child is CHIPS or JIPS or at risk of being CHIPS or JIPS.
- 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.

Criminal Background Investigation

Background

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.]

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.

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:

- 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.]

Description

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

First, 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 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 will adversely affect the child on the relative's ability to care for the child before payments may be denied.

Finally, the bill draft 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.

Discontinuation of Payments

Background

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.]

Description

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.

Copayments for Child Care Subsidies

Background

Under current law, an individual who receives a child care subsidy 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.]

Description

The bill provides that kinship care relatives are not responsible for a copayment for child care services received on behalf of a child for whom they are receiving kinship care payments. In addition, the bill draft provides that DWD may exempt others from copayment requirements by rule.

Funding

Background

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.]

Description

The bill 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 bill 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.

Health Services Consent Form

Background

Under current law, generally only parents, guardians and legal custodians may consent to a minor's health care. Testimony to the Special Committee indicated that there are concerns among relatives who care for a child under an informal agreement with the child's parents that they may not legally obtain health care for the children in their care.

Description

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.

Notice of Guardianship Proceedings

Background

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.]

Description

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

Legislative Council Study on Guardianship and Legal Custody

Background

The Special Committee heard testimony from invited speakers and comments by committee members that there is ambiguity under current law regarding the rights and

responsibilities of guardians and legal custodians and how those rights and responsibilities relate to any residual rights and responsibilities of a child's parents.

Description

The bill 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.

Committee and Joint Legislative Council Votes

This Appendix identifies the votes by the Special Committee on Relative Caregivers and the Joint Legislative Council on the proposal that was approved by the Special Committee for recommendation to the Joint Legislative Council for introduction in the 2003-04 Session of the Legislature:

SPECIAL COMMITTEE VOTES

By a mail ballot dated February 10, 2003, the Special Committee voted to recommend WLC: 0127/1 to the JLC for introduction in the 2003-04 Session of the Legislature. The votes on the draft were as follows:

- WLC: 0127/1, relating to the kinship care program, notice of guardianship proceedings, creating a medical services consent form, and requesting the joint legislative council to study guardianship and legal custody: Ayes, 12 (Sen. Moore; Reps. Kestell, Krug, and Ott; and Public Members Albrecht, Cabraal, Gonzalez, Hafner, Huber, Kratz, McAllister, and Medaris); and Noes, 0.

JOINT LEGISLATIVE COUNCIL VOTES

At its February 19, 2003 meeting, the Joint Legislative Council voted as follows on the following recommendation of the Special Committee:

Introduction by the Joint Legislative Council of WLC: 0127/1 **PASSED** by a unanimous voice vote. WLC: 01271 was subsequently introduced as 2003 Assembly Bill 201 and 2003 Senate Bill 82.

APPENDIX 2

JOINT LEGISLATIVE COUNCIL s. 13.81, Stats.

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This 22-member committee consists of the majority and minority party leadership of both houses of the Legislature, the cochairs and ranking minority members of the Joint Committee on Finance, and 5 Senators and 5 Representatives appointed as are members of standing committees.

Committee Materials List

February 10, 2003 Mail Ballot

February 10, 2003 Mail Ballot

WLC: 0127/1, relating to the kinship care program, notice of guardianship proceedings, creating a medical services consent form, and requesting the joint legislative council to study guardianship and legal custody.

January 24, 2003 Meeting

WLC: 0053/2, relating to creating a medical services consent form

WLC: 0105/1, relating to eligibility for kinship care payments

WLC: 0106/1, relating to liability of kinship care relatives for child care subsidy copayment

WLC: 0108/1, relating to appeal of denial of kinship care payments based on conviction record

WLC: 0109/1, relating to continuation of kinship care and long-term kinship care payments following notice of discontinuation of payments

WLC: 0110/1, relating to conviction records of applicants for kinship care payments

WLC: 0111/1, relating to issuing foster home licenses to relative caregivers

WLC: 0112/1, relating to denial or termination of kinship care payments on the basis of an arrest

WLC: 0113/1, relating to notice of discontinuation of kinship care payments

WLC: 0114/1, relating to notice of hearing for appointment of a guardian for a minor

WLC: 0115/1, relating to joint legislative council study on guardianship and legal custody

Memorandum from Lin Kenworthy, a concerned grandparent (12-4-02)

December 4, 2002 Meeting

WLC: 0053/1, relating to creating a medical services consent form

Memo No. 5, Adoption Assistance Program (10-22-02; updated 11-26-02)

Memo No. 9, Recommendations to the Special Committee on Relative Caregivers (11-22-02)

Memo No. 10, Comparison of Criminal Background Checks in Kinship Care and Foster Care (11-26-02)

Memo No. 11, Kinship Care in El Paso County, Colorado (11-27-02)

Memorandum from Lin Kenworthy, a concerned grandparent regarding the relative caregiver study committee (11-25-02)

Memorandum from Yvonne Onsager, Fiscal Analyst, Legislative Fiscal Bureau, regarding Kinship Care proposals (11-26-02)

October 30, 2002 Meeting

WLC: 0013/1, relating to health care agents for parents of a minor

Memo No. 4, Determining Residency of a Child Who Lives With a Relative for Purposes of School Attendance (10-21-02)

Memo No. 6, Comparison of Criminal Background Checks in Kinship Care and Foster Care (10-23-02)

Memo No. 7, States' Kinship Care Policies (10-23-02)

Memo No. 8, Recommendations to the Special Committee on Relative Caregivers (10-28-02)

Letter from Susan Dreyfus, Administrator, Division of Children and Family Services, Department of Health and Family Services (9-10-02)

Testimony, Susan Dreyfus, Administrator, Division of Children and Family Services, Department of Health and Family Services

Testimony, Patricia Delessio, Attorney, Legal Action of Wisconsin, Inc.

Testimony, Micabil Diaz-Martinez, Legal Director, American Civil Liberties Union of Wisconsin

September 3, 2002 Meeting

Memo No. 2, Consent to Medical Care and Education (8-23-02)

Memo No. 3, Standing of Third Parties in Custody Actions (8-23-02)

Testimony, Dr. Julie Poehmann, Assistant Professor, School of Human Ecology, Human Development and Family Studies, University of Wisconsin-Madison

August 8, 2002 Meeting

Staff Brief 02-2, Grandparent and Other Relative Caregivers for Children (8-1-02)

Memo No. 1, Rights of Relatives and Other Third Parties for Visitation of Children (7-30-02)

Testimony, Susan Dreyfus, Administrator, Division of Children and Families, Department of Health and Family Services

Testimony, Mary Brintnall-Peterson, University of Wisconsin-Extension, Grandparents Raising Grandchildren Partnership of Wisconsin (overheads to support testimony)

Testimony, Patti Seger, Policy Development Coordinator, Wisconsin Coalition Against Domestic Violence

AUG 01 2003



The Wave of the Future

**Winnebago County
Department of Human Services**

July 17, 2003

Senator Carol Roessler, Chair
State Capitol
8 South, PO Box 7882
Madison, WI 53707-7882

Re: SB 82 (Kinship Care)

Dear Senator Roessler,

As the Winnebago County Kinship Social Worker I am writing to express my concerns regarding several proposed changes to the kinship care program included in SB 82.

Having worked in the field of child welfare for over 30 years my primary concern as a kinship care social worker is that children receive appropriate care and are safe in what ever setting they reside. I am therefore concerned that SB 82 proposes to limit / eliminate the ability of county departments to consider the arrest history of relative caregivers and other household members when determining eligibility for the kinship care program. Having reviewed many criminal background histories over the last four years, it is obvious to me that many arrests are plea-bargained down to lesser crimes through the course of the judicial process. My concern is that by eliminating our ability to look at these arrest histories we may somehow miss an important aspect of judging the current appropriateness and safety of a child residing in a relative setting.

Along these same lines I would like to see SB 82 incorporate the current practice of applicants addressing appeals to the agency director/delegate when a grant is denied due to criminal history. My experience has been that we have been able to resolve these denials at the agency level most often and to introduce the Division of Hearings and Appeals as a first step in this process may actually be counter productive to our clients. I do believe, however, that if an applicant is dissatisfied with a decision after review by the agency director/delegate that they should then have the option to request a hearing with the Division of Hearings and Appeals.

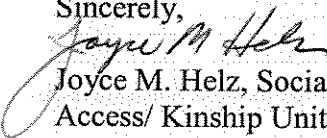
SB 82 proposes to eliminate using the criteria that a child is at risk of CHIPS/JIPS jurisdiction. At this time the kinship care program is not a sum sufficient program and therefore our resources now must be utilized to meet the needs of the most vulnerable children in our communities, those who have been or are at risk of child abuse and neglect. By definition the term "at risk of CHIPS/JIPS" should be very liberal in practice. It would be my opinion that only children who are living with a relative at the convenience of the parent or the relative, or children, who are

residing with a relative so as to attend a school of choice, would not qualify. The real issue may be that more training is needed for kinship staff who complete assessments, so as to clarify what constitutes "risk of CHIPS/JIPS" is needed, rather than changing the current law. At this time also, current law does provide the protection of the appeal process through the Division of Hearings and Appeals for those individuals who feel they have been unfairly denied a benefit based on the jurisdictional criteria. I would further note that should the kinship program be made a sum sufficient program, which would eliminate waiting lists throughout the state, that CHIPS/JIPS eligibility criteria will still be necessary. I believe using this criteria is a good use of our resources.

At this time in the state of Wisconsin, childcare funding for working relatives is tied to the kinship grant. (BWSP Operations Memo No 00-71, file 7060) Furthermore in situations where relatives are caring for relative children, when there is no court order for placement, the child care funding is based on the relatives income. I believe this policy needs to be changed so as to allow access to childcare funding regardless of whether a relative receives a kinship grant. I further believe that for child care funding purposes, the relatives income should not be used, rather the parent's income at the time the child was placed should be used as the determining factor, as it is with court ordered children.

I thank you for giving me this opportunity to express my concerns regarding SB 82.

Sincerely,


Joyce M. Helz, Social Worker

Access/ Kinship Unit

Winnebago County Department of Human Services

PO Box 2646

Oshkosh, WI 54903-2646

(920) 236-4619

Jermstad, Sara

From: Rohrer, Daniel
Sent: Monday, July 21, 2003 5:06 PM
To: Jermstad, Sara
Subject: FW: Please support SB 82

CR inbox... not constit.

-----Original Message-----

From: Mary Berryman Agard [mailto:marya@globaldialog.com]
Sent: Monday, July 21, 2003 4:48 PM
To: Sen.Roessler@legis.state.wi.us; Sen.Kanavas@legis.state.wi.us;
Sen.Brown@legis.state.wi.us; Sen.Welch@legis.state.wi.us;
Sen.Schultz@legis.state.wi.us; Sen.Robson@legis.state.wi.us;
Sen.Chvala@legis.state.wi.us; Senator Jauch;
Sen.Carpenter@legis.state.wi.us
Subject: Please support SB 82

Dear Senators:

I am writing as a person who has worked in and around the child welfare system here in Wisconsin for nearly 30 years, and urging your support for SB 82. Many aspects of the state's work to provide safe homes for children can be debated by reasonable people, but the one thing above debate is this simple fact: children do better when they live in their own families. In this regard, kinship care is a critical part of keeping children connected to their families of origin, of guaranteeing them the security that grows from long chain of family connectedness that those of us who are fortunate take for granted, and of assuring their development into prosocial members of society. Kinship care is humane, cost-effective, and vital.

The changes proposed in SB 82 open the door to kinship care for some children currently denied that option. It establishes more reasonable rights of fair hearing for families offering to care for their young kin, and removes untenable financial burdens to some kinship households. Your support for SB 82 is critical in assuring that thousands of Wisconsin's children can remain connected to their own families.

Sincerely,
Mary Berryman Agard

133 S. Brittingham Place
Madison WI 53715
608.257.7809 v
608.257.3313 f
608.770.0111 c

SB82

Jermstad, Sara

From: Asbjornson, Karen
Sent: Tuesday, July 22, 2003 8:04 AM
To: Jermstad, Sara
Subject: FW: SB82 Relative Caregivers Bill
CR email - SB 82

Karen Asbjornson
Office of Senator Carol Roesler
(608) 266-5300/1-888-736-8720
Karen.Asbjornson@legis.state.wi.us

-----Original Message-----

From: Ken Kenworthy [mailto:tvcken@newnorth.net]
Sent: Monday, July 21, 2003 9:41 PM
To: sen.roessler@legis.state.wi.us
Cc: sen.kanavas@legis.state.wi.us; sen.brown@legis.state.wi.us; sen.welch@legis.state.wi.us; sen.schultz@legis.state.wi.us; sen.robson@legis.state.wi.us; sen.chvala@legis.state.wi.us; sen.jauch@legis.state.wi.us; sen.carpenter@legis.state.wi.us
Subject: SB82 Relative Caregivers Bill

To the Senate Committee on Health, Children, Families, Aging and Long Term Care
RE: SB82 RELATIVE CAREGIVERS

In case this particular bill would come up for vote in the near future, I would like to make comment for your considerations on SB82 as it is being presented to you for review and possible approvals.

MEDICAL CONSENT FORM:

- 1) The requirement for parent's approval should be deleted. In most cases when the children are "dropped off at grandparents", and some for considerable periods of time, the location of the parent(s) is unknown. In most cases, it would be impossible to obtain a parental permission and this part would deem the Consent Form for Medical useless. This would not be "in the best interest of the child" and would do nothing to add to the emergency medical needs for them. This might be the case in Milwaukee County where the parents and all are mostly living in the same household and are frequent visitors, but it is definitely not feasible in all of Wisconsin where parents locations are unknown or have even abandoned the child(tren).

- 2) The form itself in its present form is "flimsy" and does not have enough "bite" to make it a legal document for the child and/or the caregiver. The parent's ability to cancel at anytime, does not give this document and real authenticity. The recommendation for the "caregiver" to be the "notifier to all concerned" in case of a rescinding of the Consent by the parent puts the responsibility on the wrong person. The parent should be the one responsible for all notifications.
 - 3) The form provides no area for a "CO-PARENT" to be listed on the Medical Consent form. Not having co-parent space available would not be in the best interest of the child neither. If the primary caregiver has "consent" and is out of town, incapacitated, ill, in surgery and/or unable to make decisions at that particular time, there needs an opportunity to be made and should be done so at the original signing for the "Co-Parent".
 - 4) If the child is covered under an insurance by any parent, this should follow the child to document they have insurance coverage by one or both parents. This needs to be documented.
 - 5) BadgerCare should be a "transferable coverage" if it is in force while the child is with the parent. This then should be "transferable to the caregiver" and acknowledged on the Medical Consent form. The child should not be denied continued medical coverage because he/she has to change living arrangements.
 - 6) WI Kinship Care funding program, I wholeheartedly agree, needs to be totally reviewed. The whole program is not handled very efficiently or uniform across our state. The changes recommended here, however, would be a great beginning. There are better ways to help these children who are being shuffled around in Foster care, Kinship Care or Relative Care.
 - 7) Section 2 48.57(3M)(am)1.b. (re: child left with relative has) "parent's consent" is absurd and should not be a factor. Many situations, the children are handed over by social services or the child(ren) are dropped off at the relatives and the parents disappear. To have the "parent's consent" again is almost impossible to do. Maybe in Milwaukee County, but not in the rest of our state of Wisconsin.
- The best thing your committee could recommend is a Research into a Subsidized Standby Guardianship statewide program that could cover almost all the problems associated with relative caregivers. 34 states and the District of Columbia currently are doing this program. (Expanding Permanency Options for Children: A Guide to Subsidized Guardianship Programs by the Children's Defense Fund.)

I appreciate the opportunity to approach your committee in this manner. Living in the northwoods makes it very hard for one to participate in our government proceedings in Madison, but one that is very enjoyable to be able to do. The information recommended in this bill is not strong enough to do the caregivers justice across our state of Wisconsin. A deeper look into this whole problem in comparison to "what is working in other states" would be very important.

There are many problems "out here" with these particular people trying to make ends meet, particularly for medical coverage in general. Therefore, to have a "consent form" is fine, but there still is the problem of **accessing** the "medical services" that are needed.

I trust you all will take a good hard look at what is happening to our relative caregivers in WI, and mostly to our children, whether it be for a week or two at a time as "drop off kids" or months at a time and that you will truly make change for "the best interest of the child(ren)" of Wisconsin.

Linda M. Kenworthy (Mrs. Kenard L.)
W5220 Terrace View Road
Tomahawk, WI 54487-9428

Active member Grandparents Rights of WI., Inc., headquartered in Milwaukee
An "advocacy group" dedicated to keeping and restoring the bond between
grandchildren and grandparents.

LA CROSSE COUNTY
HUMAN SERVICES DEPARTMENT

AUG 11 2003

300 4TH STREET NORTH
P O BOX 4002
LA CROSSE, WI 54602-4002

REPLY TO:

608-785-6095

August 4, 2003

Senator Carol Roessler, Chair
State Capitol
8 South, P.O. Box 7882
Madison, WI 53707-7882

Senator Mark Meyer
State Capitol, Room 109 So.
P.O. Box 7882
Madison, WI 53707-7882

Senator Ted Kanavas
State Capitol
20 South, P.O. Box 7882
Madison, WI 53707-7882

Senator Chuck Chvala
State Capitol
130 South, P.O. Box 7882
Madison, WI 53707-7882

Senator Ronald W. Brown
State Capitol
104 South, P.O. Box 7882
Madison, WI 53707-7882

Senator Robert Jauch
State Capitol
19 South, P.O. Box 7882
Madison, WI 53707-7882

Senator Bob Welch
State Capitol
10 South, P.O. Box 7882
Madison, WI 53707-7882

Senator Tim Carpenter
State Capitol
126 South, P.O. Box 7882
Madison, WI 53707-7882

Senator Dale Schultz
State Capitol
18 South, P.O. Box 7882
Madison, WI 53707-7882

Senator Judy Robson
State Capitol
5 South, P.O. Box 7882
Madison, WI 53707-7882

Dear Senators:

I would like to request your support for SB 82 regarding various improvements in the Kinship Care Program. During the Summer and Fall of 2002, I was fortunate to be part of the legislative Audit Bureau's special committee on Relative Caregivers. Counties, advocates, private agencies, and state legislators worked hard to reach consensus on what we feel are needed improvements in the Kinship Care Program. Specifically, I have outlined below some of the recommendations for the program.

August 4, 2003

- SB 82 removes the requirement that children living with relatives must be at risk of meeting CHIPS or JIPS criteria in order to qualify for kinship care payments. Currently relatives may be denied benefits for children who have lived with them for years, often since birth, when the child's parents have never provided care for them but still are not deemed totally unable to provide for their care in the future. Benefits may be denied regardless of where the child's best interests lie.
- SB 82 would prevent a denial of benefits based upon a criminal background check unless the agency found that a conviction, or pending arrest, was likely to adversely affect the child or the relative's ability to care for the child. Currently benefits are denied based upon arrests as well as convictions, and the law applies to a very long list of crimes, regardless of how long ago they occurred.
- SB 82 provides for a fair hearing whenever kinship care benefits are denied based upon a criminal background check. Currently reviews in these cases are limited to the agency that made the initial denial decision, unlike all other kinship care reviews which are provided through fair hearings by the state Division of Hearings and Appeals.
- SB 82 does not prohibit waiting lists, but does authorize the Department of Health and Family Services (DHFS) to request supplemental funding of the Department of Administration (subject to approval by the Joint Finance Committee) if funds are insufficient to provide payments to all relatives who are eligible.

Other provisions in SB 82 would:

- 1) improve the kinship care notice of appeal rights,
- 2) remove working kinship care relatives' liability for child care co-payments,
- 3) provide for a medical consent form for use when a parent is absent, and
- 4) change hearing notices when guardians are appointed.

Kinship care relatives perform a very valuable service to children and families in Wisconsin and to the state. 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.

Thank you for your time and attention to this issue.

Sincerely,



Gerald R. Huber, Director

LA CROSSE COUNTY HUMAN SERVICES
DEPARTMENT

GRH:rew

Carol - Do you have a position on this bill?

Jennifer

NOT YET

August 19, 2003

Joyce M. Helz, Social Worker
Access/Kinship Unit
Winnebago County Department of Human Services
PO Box 2646
Oshkosh, WI 5903-2646

Dear Joyce,

Thank you for your contact on Senate Bill 82, relating to the Kinship Care Program.

I have not yet taken a position on this bill and very much welcome your input. As the Chair of the Senate Committee on Health, Children, Families, Aging and Long Term Care, I have scheduled a public hearing on this bill for September 4, 2003. The hearing information is attached for your review. I have also attached a copy of the Legislative Council Special Committee report on Kinship Care. This will hopefully provide some insight into the development of the bill.

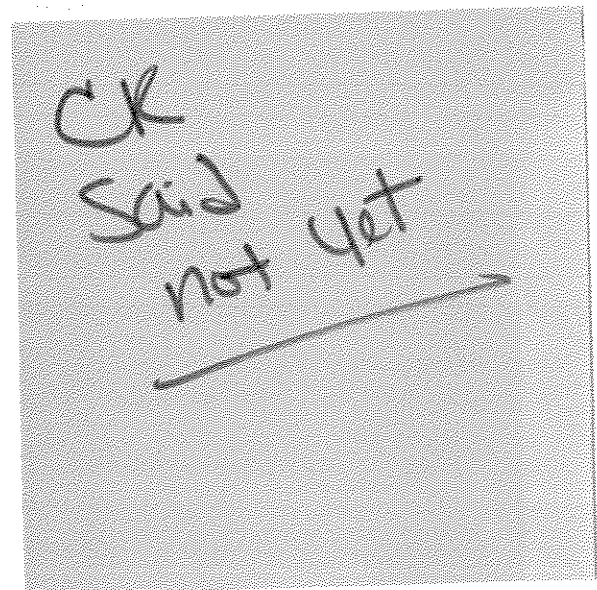
Thank you again for sharing your views with me on this issue. I will keep you updated as this bill moves through the Legislative process.

Sincerely,

CAROL ROESSLER
State Senator
18th Senate District

CR:/jh S:\DOCS\Jennifer\8-19-03 sb 82 kinship.doc

CR
said
not yet



September 3, 2003

TO: Representative Leah Vukmir

FROM: Liz Schumacher, JD, Legislative Counsel, Government Relations
Susan Manning, JD, HIPAA Consulting Attorney

RE: SB 82 and AB 201: Caregiver Consent Recommendations and Questions

On behalf of over 10,000 Wisconsin physicians, thank you for this opportunity to provide drafting suggestions for SB 82 and AB 201, related to caregiver consent. The Wisconsin Medical Society's suggestions are limited to bill sections that affect authorization to consent to health services, contained in Sec. 48.979.

We are concerned that the draft language does not accurately reflect current law in all examples, and that some definitions require further clarification or specificity. Moreover, it is our belief that unexpected circumstances and/or conflicts between caregivers and others able to provide consent may occur if the current language is not revised. In order to revise the language to increase clarity and reflect current law and legislative intent, we offer the following suggestions and comments.

1. Comments and Suggestions Regarding Definitions.

- a. Caregiver Definitions. The bill defines a caregiver as an individual 18 years old with whom the child resides. This language should be further defined to avoid misinterpretations. We recommend including a definition for "with whom the child resides." Does this section include temporary or permanent residency? Would this include a daycare provider taking care of the child over the weekend?
- b. Health Care Provider Definitions. The bill states that a health care provider must be licensed or permitted to practice by the department. Is there a current statute or code section that defines this language? Is the intent of this language the same as the current Wisconsin privacy statute, Wis. Stats. 146.81 and Wis. Stats. 155?
- c. Health Care Services. The bill states that health care services include emergency or ordinary care. We are concerned that the definition of "ordinary" is unclear, and may be interpreted incorrectly to implement care. Recommend addressing how preventative care (i.e.: dental cleaning, immunizations) is defined. Recommend considering using the terms "emergency" and "non-emergency" care as an alternate definition.

2. Comments and Suggestions Regarding Authorization of a Caregiver to Provide Consent.

- a. The bills allow a parent to authorize a caregiver to consent to treatment. However, the bill language does not address the appropriate procedure for a situation where both parents are not physically present to provide consent. Please clarify what would be required if a child has two parents, and one authorizes the caregiver to consent, and the other parent is unavailable, or disagrees. Which parent's authorization would be used? Would there be any liability for the provider if one parent's consent were used despite opposite intent of the other parent?

3. Other Comments and Suggestions: General Provisions

- a. Current Wisconsin privacy laws and HIPAA would require that the patient sign an authorization for release of medical information allowing release to the caregiver before the health care provider could talk to the caregiver about the child's treatment. As written, SB 82 and AB 201 appear to allow medical information to be provided to a caregiver without patient authorization for release of this information. We recommend that any language that would allow inappropriate release within Sec. 48.979 be revised to reflect legal privacy requirements.
- b. We recommend that the statutory form included in SB 82 and AB 201 be revised as follows:
 - i. Consider including language that addresses situations where a child may be residing with the caregiver.
 - ii. Consider adding language that would require some sort of identification process/identifying information regarding the caregiver to ensure that the health care provider can verify that the caregiver is indeed the designated caregiver. One recommendation would be to require an identification card or other verification source be used.
 - iii. Consider revising the language removing the requirement that an attempt be made to contact the parent in an emergency before the caregiver may consent to allow a provider to provide care. If a parent has designated the caregiver to provide consent, why is this requirement necessary? Technically, a health care provider may provide treatment without consent in an emergency.
 - iv. Consider revising the language requiring that all services be performed under the direction of a licensed health care provider. Recommend maintaining current law.
 - v. Recommend clarifying whether another legally authorized person other than the patient may sign the form. What will happen if the patient cannot sign the form?
 - vi. In the event that a child not living with the caregiver invalidates a form, a statement may be added to the form clarifying that the child is currently residing with the caregiver. Recommend revising the form language to address this type of situation.

The Society looks forward to working with you and Legislative Council in revising the current draft language in AB 201 and SB 82. Please contact Liz Schumacher at 608-442-3769 or lizs@wismed.org or Susan Manning at 608-442-3800 or hipaa@wismed.org if you would like more information or have questions.

Halbur, Jennifer

From: Liz Schumacher [LizS@WISMED.ORG]
Sent: Wednesday, September 10, 2003 9:59
To: jennifer.halbur@legis.state.wi.us
Subject: SB 82- Caregiver Consent

Dear Jennifer,

Attached is the memo we gave Rep. Vukmir and Anne Sappenfield from Legislative Council last week. It includes several substantive suggestions for changing the language to more accurately reflect current law.

We would appreciate it if Senator Roessler would remove this from next week's Senate Health committee calendar until we have a chance to revise the language further with Legislative Council to reflect current practice and law.

* Please let me know if Senator Roessler would like to meet with us to discuss this. I'd like to bring along Susan Manning, an attorney who was instrumental in drafting several of the current legal provisions related to this issue.

Thanks,

Liz

Elizabeth A. Schumacher, J.D.
Legislative Counsel
Wisconsin Medical Society
330 E. Lakeside St.
Madison, WI 53715
tele: 608.442.3769
cell:608.444.3141
fax:608.442.3802
<http://www.wisconsinmedicalsociety.org>

Contact Detail

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

Office: (920) 236-4619

Contact Date: 08/07/2003

Contact Type: Mail

Summary: SB 82

Issue:

Position:

Description: Has concerns with several proposed changes to the kinship care program. She has worked in the field of child welfare for over 30 years as a kinship care social worker. Her primary concern is that children receive appropriate care and are safe in whatever setting they reside. She is concerned that SB82 proposes to limit/eliminate the ability of county departments to consider the arrest history of relative caregivers and other household members when determining eligibility for the kinship care program. Having reviewed many criminal background histories over the last 4 years, it is obvious to her that many arrests are plea-bargained down to lesser crimes through the course of the judicial process. She is concerned that by eliminating the ability to look at those arrest histories they may somehow miss an important aspect of judging the current appropriateness and safety of a child residing in a relative setting. Along these same lines she would like to see SB82 incorporate the current practice of applicants addressing appeals to the agency director/delegate when a grant is denied at the agency level most often and to introduce the Division of Hearings and Appeals as a first step in this process may actually be counter productive to our clients. At this time in WI Childcare funding for working relatives is tied to the kinship grant. Child care funding is also based on relatives income. She believes this policy needs to be changed so as to allow access to childcare funding regardless of whether a relative receives a kinship grant. I further believe that for child care funding purposes, the relatives income should not be used, rather the parent's income at the time the child was placed should be used as the determining factor, as it is with court ordered children.

Status: Done

Closed Date: 10/31/2003

Assigned: Halbur, Jennifer

Owner: Halbur, Jennifer

Note **Note Date:** 10/31/2003

Summary: JH called Joyce

Contact Type:

Description: CR had said hold on this one for awhile. I had been "holding" but decided to call Joyce to let her know CR saw her letter and was considering sharing it with DHFS. I also told her CR would keep her informed as to the status of the bill.