



2015 ASSEMBLY BILL 407

October 13, 2015 – Introduced by Representatives LOUDENBECK, KLEEFISCH, BILLINGS, DOYLE, EDMING, JOHNSON, KULP, SKOWRONSKI, SPREITZER, SUBECK, SINICKI, A. OTT, KITCHENS and MURPHY, cosponsored by Senators PETROWSKI, MOULTON, NASS, OLSEN and LASSA. Referred to Committee on Children and Families.

1 **AN ACT** *to renumber* 48.623 (6) and 48.977 (3r); *to amend* 48.623 (1) (c), 48.623
2 (2) (intro.), 48.623 (3) (c) 3., 48.623 (6) (title), 48.685 (1) (ag) 1. b., 48.685 (1) (b),
3 48.685 (2) (am) 5., 48.685 (2) (b) 1. e., 48.685 (3) (a), 48.685 (4m) (a) (intro.),
4 48.685 (4m) (ad), 48.685 (5) (bm) (intro.) and 48.977 (4) (b) 2.; and *to create*
5 48.623 (6) (bm), 48.623 (7) (e), 48.977 (3r) (a) (title), 48.977 (3r) (b), 48.977 (4)
6 (c) 1. gm. and 48.977 (5m) of the statutes; **relating to:** appointment of a
7 successor guardian for a child in need of protection or services and eligibility
8 of a successor guardian for subsidized guardianship payments, providing an
9 exemption from emergency rule procedures, and granting rule-making
10 authority.

Analysis by the Legislative Reference Bureau

This bill permits the appointment of a successor guardian for a child in need of protection or services to assume the duty and authority of guardianship on the death or incapacity of the child's guardian. The bill also specifies the conditions that a successor guardian must meet to be eligible for monthly subsidized guardianship payments.

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Under current law, a county department of human services or social services (county department) or, in a county having a population of 750,000 or more, the Department of Children and Families (DCF) must provide monthly subsidized guardianship payments to the guardian of a child who has been adjudged to be in need of protection or services if certain conditions have been met, including the conditions that: 1) the child, if 14 years of age or over, has been consulted with regarding the guardianship arrangement; 2) the guardian has a strong commitment to caring for the child permanently; 3) the guardian is licensed as the child's foster parent, which licensing includes an inspection of the guardian's home under rules promulgated by DCF; 4) the guardian and all adult residents of the guardian's home have passed a criminal background investigation; and 5) prior to being named as guardian of the child, the guardian entered into a subsidized guardianship agreement with the county department or DCF.

Current law also permits a county department or DCF to provide monthly subsidized guardianship payments for a period of up to 12 months to an interim caretaker on the death, incapacity, resignation, or removal of a subsidized guardian if the interim caretaker meets certain conditions, including passing a home inspection and a criminal background investigation.

This bill permits a subsidized guardianship agreement or an amended subsidized guardianship agreement to also name a prospective successor guardian to assume the duty and authority of guardianship on the death or incapacity of the subsidized guardian. A person so named as a prospective successor guardian is eligible for monthly subsidized guardianship payments only if the subsidized guardianship agreement or amended subsidized guardianship agreement was entered into before the death or incapacity of the subsidized guardian and if certain other conditions are met, including the conditions that:

1. The county department or DCF determines that the child, if 14 years of age or over, has been consulted with regarding the successor guardianship arrangement.

2. The county department or DCF determines that the person has a strong commitment to caring for the child permanently.

3. The county department or DCF inspects the home of the person, interviews the person, and determines that placement of the child with the person is in the best interests of the child.

4. Prior to being appointed as successor guardian to assume the duty and authority of guardianship, the person enters into a subsidized guardianship agreement with the county department or DCF.

5. The person and all nonclient residents of the person's home have passed a criminal background investigation conducted prior to the person entering into the subsidized guardianship agreement.

6. The court assigned to exercise jurisdiction under the Children's Code (juvenile court) confirms that the conditions required of a successor guardian have been met, appoints the person as successor guardian to assume the duty and authority of guardianship, and either terminates any juvenile court order placing the child outside of the child's home or dismisses any juvenile court proceeding in which the child has been adjudged to be in need of protection or services.

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The bill also creates a procedure for the nomination and appointment of a successor guardian for a child in need of protection or services. Under that procedure, a person authorized to file a petition for the original appointment of a guardian for a child in need of protection or services, upon the death or incapacity of the initially appointed guardian, may file a petition for the appointment of a person named as a prospective successor guardian of the child in a subsidized guardianship agreement or amended subsidized guardianship agreement that was entered into before the death or incapacity of the guardian as successor guardian to assume the duty and authority of guardianship, and the juvenile court, after hearing, may appoint that person as successor guardian to assume that duty and authority.

For further information see the *state* 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:

1 **SECTION 1.** 48.623 (1) (c) of the statutes is amended to read:

2 48.623 (1) (c) An order under s. 48.345, 48.357, 48.363, 48.365, 938.345,
3 938.357, 938.363, or 938.365 placing the child, or continuing the placement of the
4 child, outside of the child's home has been terminated, or any proceeding in which
5 the child has been adjudged to be in need of protection or services specified in s.
6 48.977 (2) (a) has been dismissed, as provided in s. 48.977 (3r) (a).

7 **SECTION 2.** 48.623 (2) (intro.) of the statutes is amended to read:

8 48.623 (2) SUBSIDIZED GUARDIANSHIP AGREEMENT. (intro.) Before a county
9 department or the department may approve the provision of subsidized
10 guardianship payments under sub. (1) to a proposed guardian, the county
11 department or department shall negotiate and enter into a written, binding
12 subsidized guardianship agreement with the proposed guardian and provide the
13 proposed guardian with a copy of the agreement. A subsidized guardianship
14 agreement or an amended subsidized guardianship agreement may also name a
15 prospective successor guardian of the child to assume the duty and authority of

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1 guardianship on the death or incapacity of the guardian. A successor guardian is
2 eligible for monthly subsidized guardianship payments under this section only if the
3 successor guardian is named as a prospective successor guardian of the child in a
4 subsidized guardianship agreement or amended subsidized guardianship
5 agreement that was entered into before the death or incapacity of the guardian, the
6 conditions specified in sub. (6) (bm) are met, and the court appoints the successor
7 guardian to assume the duty and authority of guardianship as provided in s. 48.977
8 (5m). A subsidized guardianship agreement shall specify all of the following:

9 **SECTION 3.** 48.623 (3) (c) 3. of the statutes is amended to read:

10 48.623 (3) (c) 3. A county department or the department may propose to a
11 person receiving monthly subsidized guardianship payments that the agreement
12 under sub. (2) (b) be amended to adjust the amount of those payments. If an
13 adjustment in the amount of those payments is agreed to by the person receiving
14 those payments, the agreement shall be amended in writing to specify the adjusted
15 amount of those payments.

16 **SECTION 4.** 48.623 (6) (title) of the statutes is amended to read:

17 48.623 (6) (title) INTERIM CARETAKER; SUCCESSOR GUARDIAN.

18 **SECTION 5.** 48.623 (6) of the statutes is renumbered 48.623 (6) (am).

19 **SECTION 6.** 48.623 (6) (bm) of the statutes is created to read:

20 48.623 (6) (bm) On the death or incapacity of a guardian receiving payments
21 under sub. (1), the county department or the department providing those payments
22 shall provide monthly subsidized guardianship payments in the amount specified in
23 sub. (3) (b) to a person named as a prospective successor guardian of the child in a
24 subsidized guardianship agreement or amended subsidized guardianship
25 agreement that was entered into before the death or incapacity of the guardian if all

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1 of the following conditions are met and the court appoints the person as successor
2 guardian to assume the duty and authority of guardianship as provided in s. 48.977
3 (5m):

4 1. The county department or department determines that the child, if 14 years
5 of age or over, has been consulted with regarding the successor guardianship
6 arrangement.

7 2. The county department or department determines that the person has a
8 strong commitment to caring permanently for the child.

9 3. The county department or department inspects the home of the person,
10 interviews the person, and determines that placement of the child with the person
11 is in the best interests of the child. In the case of an Indian child, the best interests
12 of the Indian child shall be determined in accordance with s. 48.01 (2).

13 4. Prior to being appointed as successor guardian to assume the duty and
14 authority of guardianship, the person enters into a subsidized guardianship
15 agreement under sub. (2) with the county department or department.

16 5. Prior to the person entering into the subsidized guardianship agreement, the
17 county department or department conducts a background investigation under s.
18 48.685 of the person and any nonclient resident, as defined in s. 48.685 (1) (bm), of
19 the home of the person and determines that those individuals meet the requirements
20 specified in s. 48.685. The county department or department shall provide the
21 department of health services with information about each person who is denied
22 monthly subsidized guardianship payments or permission to reside in the home of
23 a person receiving those payments for a reason specified in s. 48.685 (4m) (a) 1. to 5.
24 or (b) 1. to 5.

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1 6. Any order under s. 48.345, 48.357, 48.363, 48.365, 938.345, 938.357, 938.363,
2 or 938.365 placing the child, or continuing the placement of the child, outside of the
3 child’s home has been terminated, or any proceeding in which the child has been
4 adjudged to be in need of protection or services specified in s. 48.977 (2) (a) has been
5 dismissed, as provided in s. 48.977 (3r) (b).

6 7. If the county department or department knows or has reason to know that
7 the child is an Indian child, the county department or department provides notice of
8 the Indian child’s placement in the home of the person to the Indian child’s parent,
9 Indian custodian, and tribe and determines that the home of the person complies
10 with the order of placement preference under s. 48.028 (7) (b) or, if applicable, s.
11 48.028 (7) (c), unless the county department or department finds good cause, as
12 described in s. 48.028 (7) (e), for departing from that order.

13 **SECTION 7.** 48.623 (7) (e) of the statutes is created to read:

14 48.623 (7) (e) Rules governing the payment of monthly subsidized
15 guardianship payments to a successor guardian of a child.

16 **SECTION 8.** 48.685 (1) (ag) 1. b. of the statutes is amended to read:

17 48.685 (1) (ag) 1. b. A person who has, or is seeking, a license, certification or
18 contract to operate an entity or, who is receiving, or is seeking, payment under s.
19 48.623 (6) (am) for operating an entity, or who is seeking payment under s. 48.623
20 (6) (bm) for operating an entity.

21 **SECTION 9.** 48.685 (1) (b) of the statutes is amended to read:

22 48.685 (1) (b) “Entity” means a child welfare agency that is licensed under s.
23 48.60 to provide care and maintenance for children, to place children for adoption,
24 or to license foster homes; a foster home that is licensed under s. 48.62; an interim
25 caretaker to whom subsidized guardianship payments are made under s. 48.623 (6);

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1 a person who is proposed to be named as a successor guardian in a successor
2 guardianship agreement under s. 48.623 (2); a group home that is licensed under s.
3 48.625; a shelter care facility that is licensed under s. 938.22; a child care center that
4 is licensed under s. 48.65 or established or contracted for under s. 120.13 (14); a child
5 care provider that is certified under s. 48.651; an organization that facilitates
6 delegations of the care and custody of children under s. 48.979; or a temporary
7 employment agency that provides caregivers to another entity.

8 **SECTION 10.** 48.685 (2) (am) 5. of the statutes is amended to read:

9 48.685 (2) (am) 5. Information maintained by the department of health services
10 under this section and under ss. 48.623 (6) ~~(b)~~ (am) 2. and (bm) 5., 48.651 (2m), 48.75
11 (1m), 48.979 (1) (b), and 120.13 (14) regarding any denial to the person of a license,
12 continuation or renewal of a license, certification, or a contract to operate an entity,
13 or of payments under s. 48.623 (6) for operating an entity, for a reason specified in
14 sub. (4m) (a) 1. to 5. and regarding any denial to the person of employment at, a
15 contract with, or permission to reside at an entity or of permission to reside with a
16 caregiver specified in sub. (1) (ag) 1. am. for a reason specified in sub. (4m) (b) 1. to
17 5. If the information obtained under this subdivision indicates that the person has
18 been denied a license, continuation or renewal of a license, certification, a contract,
19 payments, employment, or permission to reside as described in this subdivision, the
20 department, a county department, an agency contracted with under s. 48.651 (2), a
21 child welfare agency, or a school board need not obtain the information specified in
22 subds. 1. to 4.

23 **SECTION 11.** 48.685 (2) (b) 1. e. of the statutes is amended to read:

24 48.685 (2) (b) 1. e. Information maintained by the department of health
25 services under this section and under ss. 48.623 (6) ~~(b)~~ (am) 2. and (bm) 5., 48.651

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1 (2m), 48.75 (1m), 48.979 (1) (b), and 120.13 (14) regarding any denial to the person
2 of a license, continuation or renewal of a license, certification, or a contract to operate
3 an entity, or of payments under s. 48.623 (6) for operating an entity, for a reason
4 specified in sub. (4m) (a) 1. to 5. and regarding any denial to the person of
5 employment at, a contract with, or permission to reside at an entity or of permission
6 to reside with a caregiver specified in sub. (1) (ag) 1. am. for a reason specified in sub.
7 (4m) (b) 1. to 5. If the information obtained under this subd. 1. e. indicates that the
8 person has been denied a license, continuation or renewal of a license, certification,
9 a contract, payments, employment, or permission to reside as described in this subd.
10 1. e., the entity need not obtain the information specified in subd. 1. a. to d.

11 **SECTION 12.** 48.685 (3) (a) of the statutes is amended to read:

12 48.685 (3) (a) Subject to par. (am), every 4 years or at any time within that
13 period that the department, a county department, or a child welfare agency considers
14 appropriate, the department, county department, or child welfare agency shall
15 request the information specified in sub. (2) (am) 1. to 5. for all caregivers specified
16 in sub. (1) (ag) 1. b. who are licensed, certified, or contracted to operate an entity, or
17 who are receiving payments under s. 48.623 (6) (am) for operating an entity, and for
18 all persons who are nonclient residents of such a caregiver.

19 **SECTION 13.** 48.685 (4m) (a) (intro.) of the statutes is amended to read:

20 48.685 (4m) (a) (intro.) Notwithstanding s. 111.335, and except as provided in
21 par. (ad) and sub. (5), the department may not license, or continue or renew the
22 license of, a person to operate an entity, the department in a county having a
23 population of ~~500,000~~ 750,000 or more, a county department, or an agency contracted
24 with under s. 48.651 (2) may not certify a child care provider under s. 48.651, a county
25 department or a child welfare agency may not license, or renew the license of, a foster

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1 home under s. 48.62, the department in a county having a population of 750,000 or
2 more or a county department may not provide subsidized guardianship payments to
3 an interim caretaker under s. 48.623 (6) (am) or to a person seeking those payments
4 as a successor guardian under s. 48.623 (6) (bm), and a school board may not contract
5 with a person under s. 120.13 (14), if the department, county department, contracted
6 agency, child welfare agency, or school board knows or should have known any of the
7 following:

8 **SECTION 14.** 48.685 (4m) (ad) of the statutes is amended to read:

9 48.685 (4m) (ad) The department, a county department, or a child welfare
10 agency may license a foster home under s. 48.62; the department may license a child
11 care center under s. 48.65; the department in a county having a population of 500,000
12 750,000 or more, a county department, or an agency contracted with under s. 48.651
13 (2) may certify a child care provider under s. 48.651; the department in a county
14 having a population of 750,000 or more or a county department may provide
15 subsidized guardianship payments to an interim caretaker under s. 48.623 (6) (am)
16 or to a person seeking those payments as a successor guardian under s. 48.623 (6)
17 (bm); and a school board may contract with a person under s. 120.13 (14), conditioned
18 on the receipt of the information specified in sub. (2) (am) and (ar) indicating that the
19 person is not ineligible to be licensed, certified, provided payments, or contracted
20 with for a reason specified in par. (a) 1. to 5.

21 **SECTION 15.** 48.685 (5) (bm) (intro.) of the statutes is amended to read:

22 48.685 (5) (bm) (intro.) For purposes of licensing a foster home for the
23 placement of a child on whose behalf foster care maintenance payments under s.
24 48.62 (4) will be provided or of providing subsidized guardianship payments to an
25 interim caretaker under s. 48.623 (6) (am) or to a person seeking those payments as

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1 a successor guardian under s. 48.623 (6) (bm), no person who has been convicted of
2 any of the following offenses may be permitted to demonstrate that he or she has been
3 rehabilitated:

4 **SECTION 16.** 48.977 (3r) of the statutes is renumbered 48.977 (3r) (a).

5 **SECTION 17.** 48.977 (3r) (a) (title) of the statutes is created to read:

6 48.977 (3r) (a) (title) *Guardian*.

7 **SECTION 18.** 48.977 (3r) (b) of the statutes is created to read:

8 48.977 (3r) (b) *Successor guardian*. Subsidized guardianship payments under
9 s. 48.623 (6) (bm) may not be made to a successor guardian of a child unless the court
10 makes a finding confirming that the successor guardian is named as a prospective
11 successor guardian of the child in a subsidized guardianship agreement or amended
12 subsidized guardianship agreement under s. 48.623 (2) that was entered into before
13 the death or incapacity of the guardian and that the conditions specified in s. 48.623
14 (6) (bm) have been met, appoints the successor guardian to assume the duty and
15 authority of guardianship as provided in sub. (5m), and either terminates any order
16 specified in sub. (2) (a) or dismisses any proceeding in which the child has been
17 adjudicated in need of protection or services as specified in sub. (2) (a). If the court
18 makes that finding and appointment and either terminates such an order or
19 dismisses such a proceeding, the county department or, as provided in s. 48.623 (3)
20 (a), the department shall provide monthly subsidized guardianship payments to the
21 successor guardian under s. 48.623 (6) (bm).

22 **SECTION 19.** 48.977 (4) (b) 2. of the statutes is amended to read:

23 48.977 (4) (b) 2. The names and addresses of the child's parent or parents,
24 guardian, and legal custodian, the person nominated as the guardian of the child in

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1 the petition, and any person nominated as a successor guardian of the child in the
2 petition.

3 **SECTION 20.** 48.977 (4) (c) 1. gm. of the statutes is created to read:

4 48.977 (4) (c) 1. gm. Any person nominated as a successor guardian of the child
5 in the petition.

6 **SECTION 21.** 48.977 (5m) of the statutes is created to read:

7 48.977 (5m) SUCCESSOR GUARDIAN. (a) *Petition.* If a guardian dies or becomes
8 incapacitated, any person authorized to file a petition under sub. (4) (a) may petition
9 for the appointment of a person named as a prospective successor guardian of the
10 child in a subsidized guardianship agreement or amended subsidized guardianship
11 agreement under s. 48.623 (2) entered into before the death or incapacity of the
12 guardian as successor guardian to assume the duty and authority of guardian. The
13 petition shall be heard in the same manner and subject to the same requirements as
14 provided under this section for an original appointment of a guardian. The petitioner
15 shall include in the petition a statement that the person was so named as a
16 prospective successor guardian of the child and that the conditions specified in s.
17 48.623 (6) (bm) have been met and a request for the court to include in the court's
18 findings a finding confirming that the person was so named and that those conditions
19 have been met.

20 (b) *Appointment.* After hearing, the court may appoint a person named in a
21 petition under par. (a) as successor guardian to assume the duty and authority of
22 guardianship. The court shall include in the court's findings a finding confirming
23 that the person was named as a prospective successor guardian as stated in the
24 petition and that the conditions specified in s. 48.623 (6) (bm) have been met. The
25 person appointed as successor guardian shall receive a copy of the initial

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1 guardianship order, any court order revising that initial order, and the order
2 appointing the person as successor guardian.

3 **SECTION 22. Nonstatutory provisions.**

4 (1) SUBSIDIZED GUARDIANSHIP PAYMENTS TO SUCCESSOR GUARDIANS; RULES. Using
5 the procedure under section 227.24 of the statutes, the department of children and
6 families may promulgate the rules required under section 48.623 (7) (e) of the
7 statutes, as created by this act, for the period before the effective date of the
8 permanent rules promulgated under section 48.623 (7) (e) of the statutes, as created
9 by this act, but not to exceed the period authorized under section 227.24 (1) (c) of the
10 statutes, subject to extension under section 227.24 (2) of the statutes.
11 Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department
12 of children and families is not required to provide evidence that promulgating a rule
13 under this subsection as an emergency rule is necessary for the preservation of the
14 public peace, health, safety, or welfare and is not required to provide a finding of
15 emergency for a rule promulgated under this subsection.

16 **SECTION 23. Effective dates.** This act takes effect on the first day of the 4th
17 month beginning after publication, except as follows:

18 (1) EMERGENCY RULES GOVERNING SUBSIDIZED GUARDIANSHIP PAYMENTS TO
19 SUCCESSOR GUARDIANS. SECTION 22 of this act takes effect on the day after publication.

20 (END)