

2015 DRAFTING REQUEST

Bill

Received: 3/30/2015 Received By: gmalaise
For: Children and Families 261-8678 Same as LRB:
May Contact: By/Representing: Kimber Liedl
Subject: Children - out-of-home placement Drafter: gmalaise
Addl. Drafters:
Extra Copies:

Submit via email: YES
Requester's email: Kimberly.Liedl@wisconsin.gov
Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Designation of successor guardian eligible for subsidized guardianship payments

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	gmalaise 4/9/2015	eweiss 4/13/2015	_____		↓	
/P1	gmalaise 5/13/2015		_____	mbarman 4/13/2015	Assembly	State
/P2	gmalaise 6/2/2015	eweiss 5/19/2015	_____	mbarman 5/19/2015		State
/P3	gmalaise	eweiss	_____	lparisi		State

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	gmalaise 6/9/2015	jdyer 6/10/2015	_____	sbasford 6/10/2015	mbarman 6/10/2015	State
/2	gmalaise 7/21/2015	eweiss 7/3/2015	_____	srose 7/3/2015	srose 7/3/2015	State
/3		anienaja 7/29/2015	_____	sbasford 7/30/2015	sbasford 7/30/2015	State

FE Sent For:

→ At
Intro.

<END>

Malaise, Gordon

From: Liedl, Kimberly - DCF <Kimberly.Liedl@wisconsin.gov>
Sent: Monday, March 30, 2015 9:26 AM
To: Malaise, Gordon
Subject: DCF Drafting Instructions for Successor Guardianship Bill
Attachments: Proposed Legislation Template for 2015-16 - Successor Guardian (3).docx

Hi, Gordon, here are our drafting instructions for the successor guardianship bill. The changes outlined in the attachment are required by the federal Preventing Sex Trafficking and Strengthening Families Act. Please let me know if you have any questions.

Thanks,
Kimber

Kimberly Liedl

Legislative Liaison

Department of Children and Families

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Proposed Legislation for 2015-16 Legislative Session

Division Name

Safety and Permanence

Division Contact

Matt Steigerwald

Title

Successor Guardianship

Was this Introduced or Drafted Last Session?

No

Bill/LRB #

Not yet known

Program Impacted

Proposed statutory changes update Wisconsin statutes 48.623 and 48.977, and subsequent sections of the statute that address Subsidized Guardianship procedures to conform with recent federal law changes.

Priority (High, Medium, or Low)

High

Priority Rationale

These changes are required by federal law changes passed in Public Law 113-183, the "Preventing Sex Trafficking and Strengthening Families Act." In order to continue receiving federal child welfare Title IV-E funding, which equals approximately \$105 million per year, the state must comply with these federal law changes that became effective September 29, 2014. The new federal provision for successor guardian, which became effective immediately on passage of the federal legislation, establishes procedures for specifying in the initial guardianship agreement a successor guardian, in the event that the initial guardian dies or is incapacitated.

Summary

This change will align Wisconsin statutes and policies with new federal requirements for successor guardians. Specific changes include:

- Creation of a new paragraph at s. 48.623(6) for a successor guardian similar to s.48.623(6) with the following modifications/additions:
 - If the child was in a previous guardianship agreement that dissolved due to the death or incapacitation of the guardian and is then placed with a successor guardian named in the agreement per s. 48.623(2)(f), the child should be considered to have met all of the conditions in s. 48.623(1).
 - The child would not need to meet eligibility conditions under s. 48.623 (1)(a), except for s. 48.623 (1)(a)5. Wis. Stats.
 - The successor guardian would not be required to meet 48.623(1)(b)1 and 48.623(1)(b)3, but would need to adhere to 48.623(1)(b)2, 48.623(a)(b)5, 48.623(1)(c) and 48.623(1)(d).
 - The successor guardian and all adults residing in the guardian’s home are required to meet the requirements specified in s. 48.685 (6)(b).
 - Physical safety checks of the home have been completed.
- Creation of a new paragraph s. 48.623(2)(f) to allow designation of a successor guardian in the initial or an amended agreement:
 - An agreement or amendment may also designate a prospective successor guardian who would be reviewed for guardianship of the child in the event of the death or incapacity of the guardian. The successor guardian would need to meet background check requirements under s. 48.623(6)(b), as well as physical plant checks. The successor guardian must be approved by the agency and court, and subsequently meet the conditions in section s. 48.623(1)(b).
- Providing authority to the Department to create emergency rules to enact the changes set forth.

Administrative Significance

This change requires modifications in the eWiSACWIS system, the data system for child welfare in the state.

Fiscal Effect

The modification will have no significant effect on counties, who are responsible for Subsidized Guardianship payments because the affected children would have received Subsidized Guardianship payments in the absence of this statutory change. The statutory change simplifies the transfer of the initiation of Subsidized Guardianship payments to the new guardian. Updates

will be needed to the eWiSACWIS system, which are expected to be absorbed with current resources.

Impact on Counties or Other Departments

Workload impact will fall primarily on information technology system upgrades needed at the state level. DCF staff and county child welfare workers will need to be trained in how to implement procedures at the local level.

Known Supporters/Opponents

None

the effect that continuation in the home would be contrary to the welfare of the child; and

(II) eligible for foster care maintenance payments under section 672 (/uscode/text/42/672) of this title while residing for at least 6 consecutive months in the home of the prospective relative guardian.

(ii) Being returned home or adopted are not appropriate permanency options for the child.

(iii) The child demonstrates a strong attachment to the prospective relative guardian and the relative guardian has a strong commitment to caring permanently for the child.

(iv) With respect to a child who has attained 14 years of age, the child has been consulted regarding the kinship guardianship arrangement.

(B) Treatment of siblings

With respect to a child described in subparagraph (A) whose sibling or siblings are not so described—

(i) the child and any sibling of the child may be placed in the same kinship guardianship arrangement, in accordance with section 671 (/uscode/text/42/671) (a)(31) (/uscode/text/42/usc_sec_42_00000671----000-#a_31) of this title, if the State agency and the relative agree on the appropriateness of the arrangement for the siblings; and

(ii) kinship guardianship assistance payments may be paid on behalf of each sibling so placed.

(C) Eligibility not affected by replacement of guardian with a successor guardian

In the event of the death or incapacity of the relative guardian, the eligibility of a child for a kinship guardianship assistance payment under this subsection shall not be affected by reason of the replacement of the relative guardian with a successor legal guardian named in the kinship guardianship assistance agreement referred to in paragraph (1) (including in any amendment to the agreement), notwithstanding subparagraph (A) of this paragraph and section 671 (/uscode/text/42/671) (a)(28) (/uscode/text/42/usc_sec_42_00000671----000-#a_28) of this title.

(e) Applicable child defined

(1) On the basis of age

(A) In general

Subject to paragraphs (2) and (3), in this section, the term "applicable child" means a child for whom an adoption assistance agreement is entered into under this section during any fiscal year described in subparagraph (B) if the child attained the applicable age for that fiscal year before the end of that fiscal year.

(B) Applicable age

54.52 Standby guardianship.

- (1) A person may at any time bring a petition for the appointment of a standby guardian of the person or estate of an individual who is determined under s. 54.10 to be incompetent, a minor, or a spendthrift, except that, as specified in s. 48.97 [s. 48.978] a petition for the appointment of a standby guardian of the person or property or both of a minor to assume the duty and authority of guardianship on the incapacity, death, or debilitation and consent, of the minor's parent may be brought under s. 48.978.

NOTE: The correct cross-reference is shown in brackets. Corrective legislation is pending.

- (2) At any hearing conducted under this section the court may designate one or more standby guardians of the person or estate whose appointment shall become effective immediately upon the death, unwillingness, or inability to act, or resignation or court's removal of the initially appointed guardian or during a period, as determined by the initially appointed guardian, when the initially appointed guardian is temporarily unable to fulfill his or her duties, including during an extended vacation or illness. The powers and duties of the standby guardian shall be the same as those of the initially appointed guardian. The standby guardian shall receive a copy of the court order establishing or modifying the initial guardianship, and the order designating the standby guardian. Upon assuming office, the standby guardian shall so notify the court. Upon notification, the court shall issue new letters of guardianship that specify that the standby guardianship is permanent or that specify the time period for a limited standby guardianship.

History: 1973 c. 284; 1993 a. 486; 1997 a. 334; 2005 a. 387 ss. 507 to 509; Stats. 2005 s. 54.52; 2007 a. 45.

54.54 Successor guardian.

- (1) APPOINTMENT. If a guardian dies, is removed by order of the court, or resigns and the resignation is accepted by the court, the court, on its own motion or upon petition of any interested person, may appoint a competent and suitable person as successor guardian. The court may, upon request of any interested person or on its own motion, direct that a petition for appointment of a successor guardian be heard in the same manner and subject to the same requirements as provided under this chapter for an original appointment of a guardian.
- (2) NOTICE. If the appointment under sub. (1) is made without hearing, the successor guardian shall provide notice to the ward and all interested persons of the appointment, the right to counsel, and the right to petition for reconsideration of the successor guardian. The notice shall be served personally or by mail not later than 10 days after the appointment.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.17; 1993 a. 486; 1995 a. 73; 2005 a. 387 s. 378; Stats. 2005 s. 54.54.

54.56 Visitation by a minor's grandparents and stepparents.

- (1) In this section, "stepparent" means the surviving spouse of a deceased parent of a minor, whether or not the surviving spouse has remarried.
- (2) If one or both parents of a minor are deceased and the minor is in the custody of the surviving parent or any other person, a grandparent or stepparent of the minor may petition for visitation privileges with respect to the minor, whether or not the person with custody is married. The grandparent or stepparent may file the petition in a guardianship or temporary guardianship proceeding under this chapter that affects the minor or may file the petition to commence an independent action under this chapter. Except as provided in sub. (3m), the court may grant reasonable visitation privileges to the grandparent or stepparent if the surviving parent or other person who has custody of the minor has notice of the hearing and if the court determines that visitation is in the best interest of the minor.



State of Wisconsin
2015 - 2016 LEGISLATURE

IN 419
Wanted 4/13

GMM
PI
LRB-21077
.....
emw

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

S.A. ✓
Kref ✓

- Gen.

1 **AN ACT** ...; **relating to:** appointment of a successor guardian for a child in need
2 of protection or services and eligibility of a successor guardian for subsidized
3 guardianship payments, providing an exemption from emergency rule
4 procedures, and granting rule-making authority. ✓

Analysis by the Legislative Reference Bureau

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 by the court assigned to exercise jurisdiction under the Children's Code (juvenile court), 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 between a county department or DCF and a proposed subsidized guardian to also nominate a successor guardian to assume the duty and authority of guardianship on the death, incapacity, resignation, or removal of the subsidized guardian. A successor guardian is eligible for monthly subsidized guardianship payments if certain 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 guardian has a strong commitment to caring for the child permanently.
3. The county department or DCF inspects the home of the successor guardian, interviews the successor guardian, and determines that placement of the child with the successor guardian is in the best interests of the child.
4. The successor guardian and all nonclient residents of the successor's guardian's home have passed a criminal background investigation.
5. Prior to being appointed to assume the duty and authority of guardianship, the successor guardian enters into a subsidized guardianship agreement with the county department or DCF.
6. The juvenile court confirms that the conditions required of a successor guardian have been met, appoints the 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.

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 may petition for the designation of a successor guardian for the child either as part of the petition for the original appointment of a guardian or at any time after that appointment and the juvenile court, after hearing, may designate a successor guardian for the child. Then, upon the death, incapacity, resignation, or removal of the initially appointed guardian, the petitioner may file a petition for the appointment of the successor guardian so designated or any other competent and suitable person to assume the duty and authority of guardianship and the juvenile court, after hearing, may appoint that successor guardian or other person 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:

X

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

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

6 History: 2011 a. 32 ss. 1332n, 1332q to 1332u, 1332w; Stats. 2011 s. 48.623; 2013 a. 20.

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

7 48.623 (2) SUBSIDIZED GUARDIANSHIP AGREEMENT. (intro.) Before a county
8 department or the department may approve the provision of subsidized
9 guardianship payments under sub. (1) to a proposed guardian, the county
10 department or department shall negotiate and enter into a written, binding
11 subsidized guardianship agreement with the proposed guardian and provide the
12 proposed guardian with a copy of the agreement. A subsidized guardianship
13 agreement or an amended subsidized guardianship agreement may also nominate
14 a successor guardian of the child to assume the duty and authority of guardianship
15 on the death, incapacity, resignation, or removal of the guardian. A successor
16 guardian is eligible for monthly subsidized guardianship payments under this
17 section if the conditions specified in sub. (6) (bm) are met and the court appoints the
18 successor guardian to assume the duty and authority of guardianship as provided in
19 s. 48.977 (5m) (b). A subsidized guardianship agreement shall specify all of the
20 following:

21 History: 2011 a. 32 ss. 1332n, 1332q to 1332u, 1332w; Stats. 2011 s. 48.623; 2013 a. 20.

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

22 48.623 (3) (c) 3. A county department or the department may propose to a
23 person receiving monthly subsidized guardianship payments that the agreement
24 under sub. (2) (b) be amended to adjust the amount of those payments. If an

1 adjustment in the amount of those payments is agreed to by the person receiving
2 those payments, the agreement shall be amended in writing to specify the adjusted
3 amount of those payments.

4 History: 2011 a. 32 ss. 1332n, 1332q to 1332u, 1332w; Stats. 2011 s. 48.623; 2013 a. 20.

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

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

6 History: 2011 a. 32 ss. 1332n, 1332q to 1332u, 1332w; Stats. 2011 s. 48.623; 2013 a. 20.

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

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

48.623 (6) (bm) On the death, incapacity, resignation, or removal of a guardian
receiving payments under sub. (1), the county department or the department
providing those payments shall provide monthly subsidized guardianship payments
in the amount specified in sub. (3) (b) to a successor guardian if all of the following
conditions are met and the court appoints the successor guardian to assume the duty
and authority of guardianship as provided in s. 48.977 (5m) (b):

1. The county department or department 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 department determines that the successor
guardian has a strong commitment to caring permanently for the child.

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

1 4. The county department or department conducts a background investigation
 2 under s. 48.685 of the successor guardian and any nonclient resident, as defined in
 3 s. 48.685 (1) (bm), of the home of the successor guardian and determines that those
 4 individuals meet the requirements specified in s. 48.685. The county department or
 5 department shall provide the department of health services with information about
 6 each person who is denied monthly subsidized guardianship payments or permission
 7 to reside in the home of a successor guardian for a reason specified in s. 48.685 (4m)
 8 (a) 1. to 5. or (b) 1. to 5.

9 5. Prior to being appointed to assume the duty and authority of guardianship,
 10 the successor guardian enters into a subsidized guardianship agreement under sub.
 11 (2) with the county department or department.

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

17 7. If the county department or department knows or has reason to know that
 18 the child is an Indian child, the county department or department provides notice of
 19 the Indian child's placement in the home of the successor guardian to the Indian
 20 child's parent, Indian custodian, and tribe and determines that the home of the
 21 successor guardian complies with the order of placement preference under s. 48.028
 22 (7) (b) or, if applicable, s. 48.028 (7) (c), unless the county department or department
 23 finds good cause, as described in s. 48.028 (7) (e), for departing from that order.

24 **SECTION 7.** 48.685 (1) (b) of the statutes is amended to read:

SEC CR, 48.623 (7)(d)

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

1 48.685 (1) (b) “Entity” means a child welfare agency that is licensed under s.
2 48.60 to provide care and maintenance for children, to place children for adoption,
3 or to license foster homes; a foster home that is licensed under s. 48.62; an interim
4 caretaker or successor guardian to whom subsidized guardianship payments are
5 made under s. 48.623 (6); a group home that is licensed under s. 48.625; a shelter care
6 facility that is licensed under s. 938.22; a child care center that is licensed under s.
7 48.65 or established or contracted for under s. 120.13 (14); a child care provider that
8 is certified under s. 48.651; an organization that facilitates delegations of the care
9 and custody of children under s. 48.979; or a temporary employment agency that
10 provides caregivers to another entity.

History: 1987 a. 27, 237, 281; 1999 a. 9, 32, 56, 185, 186; 2001 a. 109; 2003 a. 321; 2005 a. 149, 184, 277; 2007 a. 20 ss. 1346 to 1358, 9121 (6) (a); 2007 a. 97, 111, 116, 130, 153; 2009 a. 28, 76, 94, 185; 2011 a. 32, 35, 87, 238; 2013 a. 20, 165, 170, 334.

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

12 48.685 (2) (am) 5. Information maintained by the department of health services
13 under this section and under ss. 48.623 (6) ~~(b)~~ (am) 2. and (bm) 4., 48.651 (2m), 48.75
14 (1m), 48.979 (1) (b), and 120.13 (14) regarding any denial to the person of a license,
15 continuation or renewal of a license, certification, or a contract to operate an entity,
16 or of payments under s. 48.623 (6) for operating an entity, for a reason specified in
17 sub. (4m) (a) 1. to 5. and regarding any denial to the person of employment at, a
18 contract with, or permission to reside at an entity or of permission to reside with a
19 caregiver specified in sub. (1) (ag) 1. am. for a reason specified in sub. (4m) (b) 1. to
20 5. If the information obtained under this subdivision indicates that the person has
21 been denied a license, continuation or renewal of a license, certification, a contract,
22 payments, employment, or permission to reside as described in this subdivision, the
23 department, a county department, an agency contracted with under s. 48.651 (2), a

1 child welfare agency, or a school board need not obtain the information specified in
2 subds. 1. to 4.

History: 1997 a. 27, 237, 281; 1999 a. 9, 32, 56, 185, 186; 2001 a. 109; 2003 a. 321; 2005 a. 149, 184, 277; 2007 a. 20 ss. 1346 to 1358, 9121 (6) (a); 2007 a. 97, 111, 116, 130, 153; 2009 a. 28, 76, 94, 185; 2011 a. 32, 35, 87, 258; 2013 a. 20, 165, 170, 334.

3 **SECTION 9. 48.685 (2) (b) 1. e.** of the statutes is amended to read:

4 48.685 (2) (b) 1. e. Information maintained by the department of health
5 services under this section and under ss. 48.623 (6) (b) (am) 2. and (bm) 4., 48.651
6 (2m), 48.75 (1m), 48.979 (1) (b), and 120.13 (14) regarding any denial to the person
7 of a license, continuation or renewal of a license, certification, or a contract to operate
8 an entity, or of payments under s. 48.623 (6) for operating an entity, for a reason
9 specified in sub. (4m) (a) 1. to 5. and regarding any denial to the person of
10 employment at, a contract with, or permission to reside at an entity or of permission
11 to reside with a caregiver specified in sub. (1) (ag) 1. am. for a reason specified in sub.
12 (4m) (b) 1. to 5. If the information obtained under this subd. 1. e. indicates that the
13 person has been denied a license, continuation or renewal of a license, certification,
14 a contract, payments, employment, or permission to reside as described in this subd.
15 1. e., the entity need not obtain the information specified in subd. 1. a. to d.

History: 1997 a. 27, 237, 281; 1999 a. 9, 32, 56, 185, 186; 2001 a. 109; 2003 a. 321; 2005 a. 149, 184, 277; 2007 a. 20 ss. 1346 to 1358, 9121 (6) (a); 2007 a. 97, 111, 116, 130, 153; 2009 a. 28, 76, 94, 185; 2011 a. 32, 35, 87, 258; 2013 a. 20, 165, 170, 334.

16 **SECTION 10. 48.685 (4m) (a) (intro.)** of the statutes is amended to read:

17 48.685 (4m) (a) (intro.) Notwithstanding s. 111.335, and except as provided in
18 par. (ad) and sub. (5), the department may not license, or continue or renew the
19 license of, a person to operate an entity, the department in a county having a
20 population of 500,000 or more, a county department, or an agency contracted with
21 under s. 48.651 (2) may not certify a child care provider under s. 48.651, a county
22 department or a child welfare agency may not license, or renew the license of, a foster
23 home under s. 48.62, the department in a county having a population of 750,000 or

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

History: 1997 a. 27, 237, 281; 1999 a. 9, 32, 56, 185, 186; 2001 a. 109; 2003 a. 321; 2005 a. 149, 184, 277; 2007 a. 20 ss. 1346 to 1358, 9121 (6) (a); 2007 a. 97, 111, 116, 130, 153; 2009 a. 28, 76, 94, 185; 2011 a. 32, 35, 87, 258; 2013 a. 20, 165, 170, 334.

6 **SECTION 11. 48.685 (4m) (ad)** of the statutes is amended to read:

7 48.685 (4m) (ad) The department, a county department, or a child welfare
8 agency may license a foster home under s. 48.62; the department may license a child
9 care center under s. 48.65; the department in a county having a population of 500,000
10 or more, a county department, or an agency contracted with under s. 48.651 (2) may
11 certify a child care provider under s. 48.651; the department in a county having a
12 population of 750,000 or more or a county department may provide subsidized
13 guardianship payments to an interim caretaker or successor guardian under s.
14 48.623 (6); and a school board may contract with a person under s. 120.13 (14),
15 conditioned on the receipt of the information specified in sub. (2) (am) and (ar)
16 indicating that the person is not ineligible to be licensed, certified, provided
17 payments, or contracted with for a reason specified in par. (a) 1. to 5.

History: 1997 a. 27, 237, 281; 1999 a. 9, 32, 56, 185, 186; 2001 a. 109; 2003 a. 321; 2005 a. 149, 184, 277; 2007 a. 20 ss. 1346 to 1358, 9121 (6) (a); 2007 a. 97, 111, 116, 130, 153; 2009 a. 28, 76, 94, 185; 2011 a. 32, 35, 87, 258; 2013 a. 20, 165, 170, 334.

18 **SECTION 12. 48.685 (5) (bm) (intro.)** of the statutes is amended to read:

19 48.685 (5) (bm) (intro.) For purposes of licensing a foster home for the
20 placement of a child on whose behalf foster care maintenance payments under s.
21 48.62 (4) will be provided or of providing subsidized guardianship payments to an
22 interim caretaker or successor guardian under s. 48.623 (6), no person who has been

1 convicted of any of the following offenses may be permitted to demonstrate that he
2 or she has been rehabilitated:

History: 1997 a. 27, 237, 281; 1999 a. 9, 32, 56, 185, 186; 2001 a. 109; 2003 a. 321; 2005 a. 149, 184, 277; 2007 a. 20 ss. 1346 to 1358, 9121 (6) (a); 2007 a. 97, 111, 116, 130, 153; 2009 a. 28, 76, 94, 185; 2011 a. 32, 35, 87, 258; 2013 a. 20, 165, 170, 334.

3 **SECTION 13.** 48.977 (3r) of the statutes is renumbered 48.977 (3r) (a).

4 **SECTION 14.** 48.977 (3r) (a) (title) of the statutes is created to read:

5 48.977 (3r) (a) ^(Title) *Guardian.*

6 **SECTION 15.** 48.977 (3r) (b) of the statutes is created to read:

7 48.977 (3r) (b) *Successor guardian.* Subsidized guardianship payments under
8 s. 48.623 (6) (bm) may not be made to a successor guardian of a child unless the court
9 makes a finding confirming that the conditions specified in s. 48.623 (6) (bm) have
10 been met, appoints the successor guardian to assume the duty and authority of
11 guardianship as provided in sub. (5m) (b), and either terminates any order specified
12 in sub. (2) (a) or dismisses any proceeding in which the child has been adjudicated
13 in need of protection or services as specified in sub. (2) (a). If the court makes that
14 finding and appointment and either terminates such an order or dismisses such a
15 proceeding, the county department or, as provided in s. 48.623 (3) (a), the department
16 shall provide monthly subsidized guardianship payments to the successor guardian
17 under s. 48.623 (6) (bm).

18 **SECTION 16.** 48.977 (4) (b) 2. of the statutes is amended to read:

19 48.977 (4) (b) 2. The names and addresses of the child's parent or parents,
20 guardian, and legal custodian, the person nominated as the guardian of the child in
21 the petition, and any person nominated as a successor guardian of the child in the
22 petition.

History: 1995 a. 275; 1997 a. 27, 35, 80, 237; 1999 a. 133; 2001 a. 2, 109; 2005 a. 25, 130, 387; 2007 a. 77; 2009 a. 94; 2011 a. 32, 181; 2013 a. 20.

23 **SECTION 17.** 48.977 (4) (c) 1. gm. of the statutes is created to read:

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

3 SECTION 18. 48.977 (5m) of the statutes is created to read:

4 48.977 (5m) SUCCESSOR GUARDIAN. (a) *Designation; original petition or during*
5 *guardianship.* 1. As part of a petition for the original appointment of a guardian for
6 a child under sub. (2) or at any time after that appointment, a person authorized to
7 file a petition under sub. (4) (a) may petition for the designation of a successor
8 guardian for the child to assume the duty and authority of full or limited
9 guardianship in the event of the death, incapacity, resignation, or removal by the
10 court of the initially appointed guardian. If the petition for the designation of a
11 successor guardian is brought after the original appointment of a guardian, the
12 petition shall be heard in the same manner and subject to the same requirements as
13 provided under this section for an original appointment of a guardian. If the child's
14 permanency plan calls for the potential placement of the child in the home of a
15 successor guardian and the provision of monthly subsidized guardianship payments
16 to the successor guardian, the petitioner shall include in the petition a statement
17 that the conditions specified in s. 48.623 (6) (bm) have been met and a request for the
18 court to include in the court's findings a finding confirming that those conditions
19 have been met.

20 2. After hearing, the court may designate a successor guardian whose
21 appointment shall become effective as provided in par. (b). If the petition under subd.
22 1. includes a request for the court to include in the court's findings a finding
23 confirming that the conditions specified in s. 48.623 (6) (bm) have been met, the court
24 shall include that finding in the court's findings. The successor guardian shall
25 receive a copy of the initial guardianship order, any court order revising that initial

1 order, and the order designating the successor guardian. Upon the death, incapacity,
2 resignation, or removal by the court of the initially appointed guardian, a person
3 authorized to file a petition under sub. (4) (a) may file a petition under par. (b) for the
4 appointment of the successor guardian designated under this subdivision to assume
5 the duty and authority of guardianship.

6 (b) *Appointment.* 1. If a guardian dies, becomes incapacitated, is removed by
7 order of the court, or resigns and the resignation is accepted by the court, any person
8 authorized to file a petition under sub. (4) (a) may petition for the appointment of a
9 person designated under par. (a) 2. or any other competent and suitable person as
10 successor guardian to assume the duty and authority of guardian. The petition shall
11 be heard in the same manner and subject to the same requirements as provided
12 under this section for an original appointment of a guardian. If the child's
13 permanency plan calls for the potential placement of the child in the home of a
14 successor guardian and the provision of monthly subsidized guardianship payments
15 to the successor guardian, the petitioner shall include in the petition a statement
16 that the conditions specified in s. 48.623 (6) (bm) have been met and a request for the
17 court to include in the court's findings a finding confirming that those conditions
18 have been met.

19 2. After hearing, the court may appoint the person designated under par. (a)
20 2. or any other competent and suitable person as successor guardian to assume the
21 duty and authority of guardianship. If the petition under subd. 1. includes a request
22 for the court to include in the court's findings a finding confirming that the conditions
23 specified in s. 48.623 (6) (bm) have been met, the court shall include that finding in
24 the court's findings. The powers and duties of the successor guardian shall be the
25 same as those of the initially appointed guardian. The successor guardian shall

1 receive a copy of the initial guardianship order, any court order revising that initial
2 order, and the order appointing the successor guardian.

3 **SECTION 19. 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) (d) 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) (d) 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 20. 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 * of this act takes effect on the day after publication.








20 (END)

nonstat
provisions

Malaise, Gordon

From: Liedl, Kimberly - DCF <Kimberly.Liedl@wisconsin.gov>
Sent: Friday, April 24, 2015 4:54 PM
To: Malaise, Gordon
Subject: Edits to LRB 2107/P1, Designation of successor guardian eligible for subsidized guardianship payments

Hi, Gordon, here are DCF's recommended edits to LRB-2107/P1:

-  Delete the language in the first paragraph of p. 2 that says "by the court assigned to exercise jurisdiction under the Children's Code (juvenile court)"
-  Any sentence that includes the phrase "death, incapacity, resignation, or removal of the guardian" (or some variation thereof) should be re-written to "death or incapacity", removing the terms "resignation" and "removal of the guardian", in order to be consistent with the federal language in 42 USC 673(d)(3)(C). This correction is needed in the following places:
 - o Page 3, line 16
 - o Page 4, line 14
 - o Page 10, line 7 – (see comment below to eliminate this section of the bill)
 - o Page 10, lines 24-25 – (see comment below to eliminate this section of the bill)
-  Page 3, line 14 – Change "nominate" to "name"
-  Section 2, page 3 - Add a provision that in order to be named as a potential successor guardian in a subsidized guardianship agreement the individual(s) must complete the background checks under s. 48.685 Wis. Stats.
-  Page 6, line 11 – Add "prospective" before "successor guardian" because once the guardianship is established the agency would not have authority to continue to do background checks unless the person is applying for an amendment to the assistance amount in the agreement. Make this correction throughout the provisions that apply to background checks.
-  Page 5, lines 14 – Add "the successor" guardian before "guardianship"
-  Section 19 should be removed in its entirety. We don't see a need for an additional judicial procedure for appointing a successor guardianship because a successor guardianship can be ordered under the same existing procedures for subsidized guardians.

Please let me know if you have any questions or concerns.

Thanks,
Kimber

Kimberly Liedl

Legislative Liaison

Department of Children and Families

201 East Washington Avenue

Madison, WI 53703

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State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-2107/P1
GMM:emw:ew

IN 5/13
Wanted 5/18
DM off

P2
PWR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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.

S.A. ✓
XREF ✓

Regen.

Regen. to

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

Analysis by the Legislative Reference Bureau

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 ~~by the court assigned to exercise jurisdiction under the Children's Code (juvenile court)~~, 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 between a county department or DCF and a proposed subsidized guardian to also ~~nominate~~ ^{name} a successor guardian to assume the duty and authority of guardianship on the death, ~~incapacity, resignation, or removal~~ ^{for} of the subsidized guardian. A successor guardian is eligible for monthly subsidized guardianship payments if certain 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 guardian has a strong commitment to caring for the child permanently.

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

4. The successor guardian and all nonclient residents of the successor guardian's home have passed a criminal background investigation.

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

6. The ~~juvenile 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 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.

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 may petition for the designation of a successor guardian for the child either as part of the petition for the original appointment of a guardian or at any time after that appointment and the juvenile court, after hearing, may designate a successor guardian for the child. Then, upon the death, ~~incapacity, resignation, or removal~~ of the initially appointed guardian, the petitioner may file a petition for the appointment of the successor guardian so designated or any other competent and suitable person to assume the duty and

Handwritten notes: "name" in a circle with an arrow pointing to "nominate"; "for" in a circle with an arrow pointing to "incapacity, resignation, or removal"; "conducted prior to the successor guardian entering into the subsidized guardianship agreement" written around the list items; "subsidized guardianship agreement" written vertically on the right side.

Handwritten note: "or" in a circle with an arrow pointing to "incapacity, resignation, or removal".

authority of guardianship and the juvenile court, after hearing, may appoint that successor guardian or other person 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:

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

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

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

48.623 (2) SUBSIDIZED GUARDIANSHIP AGREEMENT. (intro.) Before a county department or the department may approve the provision of subsidized guardianship payments under sub. (1) to a proposed guardian, the county department or department shall negotiate and enter into a written, binding subsidized guardianship agreement with the proposed guardian and provide the proposed guardian with a copy of the agreement. A subsidized guardianship agreement or an amended subsidized guardianship agreement may also ^{name} nominate a successor guardian of the child to assume the duty and authority of guardianship on the death, ^{or} incapacity, resignation, or removal of the guardian. A successor guardian is eligible for monthly subsidized guardianship payments under this section if the conditions specified in sub. (6) (bm) are met and the court appoints the successor guardian to assume the duty and authority of guardianship as provided in

1 s. 48.977 (5m) (b). A subsidized guardianship agreement shall specify all of the
2 following:

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

4 48.623 (3) (c) 3. A county department or the department may propose to a
5 person receiving monthly subsidized guardianship payments that the agreement
6 under sub. (2) (b) be amended to adjust the amount of those payments. If an
7 adjustment in the amount of those payments is agreed to by the person receiving
8 those payments, the agreement shall be amended in writing to specify the adjusted
9 amount of those payments.

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

11 48.623 (6) (title) INTERIM CARETAKER; SUCCESSOR GUARDIAN.

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

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

14 48.623 (6) (bm) On the death, incapacity, ~~resignation, or removal~~ of a guardian
15 receiving payments under sub. (1), the county department or the department
16 providing those payments shall provide monthly subsidized guardianship payments
17 in the amount specified in sub. (3) (b) to a successor guardian if all of the following
18 conditions are met and the court appoints the successor guardian to assume the duty
19 and authority of guardianship as provided in s. 48.977 (5m) (b):

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

23 2. The county department or department determines that the successor
24 guardian has a strong commitment to caring permanently for the child.

S. Prior to the successor guardian entering into a subsidized guardianship agreement with the county department or department, the

1 3. The county department or department inspects the home of the successor
2 guardian, interviews the successor guardian, and determines that placement of the
3 child with the successor guardian is in the best interests of the child. In the case of
4 an Indian child, the best interests of the Indian child shall be determined in
5 accordance with s. 48.01 (2).

6 4. The county department or department conducts a background investigation
7 under s. 48.685 of the successor guardian and any nonclient resident, as defined in
8 s. 48.685 (1) (bm), of the home of the successor guardian and determines that those
9 individuals meet the requirements specified in s. 48.685. The county department or
10 department shall provide the department of health services with information about
11 each person who is denied monthly subsidized guardianship payments or permission
12 to reside in the home of a successor guardian for a reason specified in s. 48.685 (4m)
13 (a) 1. to 5. or (b) 1. to 5.

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

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

22 7. If the county department or department knows or has reason to know that
23 the child is an Indian child, the county department or department provides notice of
24 the Indian child's placement in the home of the successor guardian to the Indian
25 child's parent, Indian custodian, and tribe and determines that the home of the

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successor guardian complies with the order of placement preference under s. 48.028 (7) (b) or, if applicable, s. 48.028 (7) (c), unless the county department or department finds good cause, as described in s. 48.028 (7) (e), for departing from that order.

SECTION 7. 48.623 (7) (d) of the statutes is created to read:

proposed to be

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

a person who is named as a successor guardian in a successor guardianship agreement under s. 48.623 (2);

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

48.685 (1) (b) "Entity" means a child welfare agency that is licensed under s. 48.60 to provide care and maintenance for children, to place children for adoption, or to license foster homes; a foster home that is licensed under s. 48.62; an interim caretaker ~~or successor guardian~~ to whom subsidized guardianship payments are made under s. 48.623 (6); a group home that is licensed under s. 48.625; a shelter care facility that is licensed under s. 938.22; a child care center that is licensed under s. 48.65 or established or contracted for under s. 120.13 (14); a child care provider that is certified under s. 48.651; an organization that facilitates delegations of the care and custody of children under s. 48.979; or a temporary employment agency that provides caregivers to another entity.

SECTION 9. 48.685 (2) (am) 5. of the statutes is amended to read:

48.685 (2) (am) 5. Information maintained by the department of health services under this section and under ss. 48.623 (6) (b) (am) 2. and (bm) 4., 48.651 (2m), 48.75 (1m), 48.979 (1) (b), and 120.13 (14) regarding any denial to the person of a license, continuation or renewal of a license, certification, or a contract to operate an entity, or of payments under s. 48.623 (6) for operating an entity, for a reason specified in sub. (4m) (a) 1. to 5. and regarding any denial to the person of employment at, a contract with, or permission to reside at an entity or of permission to reside with a

1 caregiver specified in sub. (1) (ag) 1. am. for a reason specified in sub. (4m) (b) 1. to
2 5. If the information obtained under this subdivision indicates that the person has
3 been denied a license, continuation or renewal of a license, certification, a contract,
4 payments, employment, or permission to reside as described in this subdivision, the
5 department, a county department, an agency contracted with under s. 48.651 (2), a
6 child welfare agency, or a school board need not obtain the information specified in
7 subds. 1. to 4.

8 **SECTION 10.** 48.685 (2) (b) 1. e. of the statutes is amended to read:

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

21 **SECTION 11.** 48.685 (4m) (a) (intro.) of the statutes is amended to read:

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

150,000

1 under s. 48.651 (2) may not certify a child care provider under s. 48.651, a county
2 department or a child welfare agency may not license, or renew the license of, a foster
3 home under s. 48.62, the department in a county having a population of 750,000 or
4 more or a county department may not provide subsidized guardianship payments to
5 an interim caretaker or successor guardian under s. 48.623 (6), and a school board
6 may not contract with a person under s. 120.13 (14), if the department, county
7 department, contracted agency, child welfare agency, or school board knows or
8 should have known any of the following:

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9 SECTION 12. 48.685 (4m) (ad) of the statutes is amended to read:

750,000

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

21 SECTION 13. 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 or successor guardian under s. 48.623 (6), no person who has been

1 convicted of any of the following offenses may be permitted to demonstrate that he
2 or she has been rehabilitated:

3 **SECTION 14.** 48.977 (3r) of the statutes is renumbered 48.977 (3r) (a).

4 **SECTION 15.** 48.977 (3r) (a) (title) of the statutes is created to read:

5 48.977 (3r) (a) (title) *Guardian*.

6 **SECTION 16.** 48.977 (3r) (b) of the statutes is created to read:

7 48.977 (3r) (b) *Successor guardian*. Subsidized guardianship payments under
8 s. 48.623 (6) (bm) may not be made to a successor guardian of a child unless the court
9 makes a finding confirming that the conditions specified in s. 48.623 (6) (bm) have
10 been met, appoints the successor guardian to assume the duty and authority of
11 guardianship as provided in sub. (5m) (b), and either terminates any order specified
12 in sub. (2) (a) or dismisses any proceeding in which the child has been adjudicated
13 in need of protection or services as specified in sub. (2) (a). If the court makes that
14 finding and appointment and either terminates such an order or dismisses such a
15 proceeding, the county department or, as provided in s. 48.623 (3) (a), the department
16 shall provide monthly subsidized guardianship payments to the successor guardian
17 under s. 48.623 (6) (bm).

18 **SECTION 17.** 48.977 (4) (b) 2. of the statutes is amended to read:

19 48.977 (4) (b) 2. The names and addresses of the child's parent or parents,
20 guardian, and legal custodian, the person nominated as the guardian of the child in
21 the petition, and any person nominated as a successor guardian of the child in the
22 petition.

23 **SECTION 18.** 48.977 (4) (c) 1. gm. of the statutes is created to read:

24 48.977 (4) (c) 1. gm. Any person nominated as a successor guardian of the child
25 in the petition.

1 **SECTION 19.** 48.977 (5m) of the statutes is created to read:

2 48.977 (5m) SUCCESSOR GUARDIAN. (a) *Designation; original petition or during*
3 *guardianship.* 1. As part of a petition for the original appointment of a guardian for
4 a child under sub. (2) or at any time after that appointment, a person authorized to
5 file a petition under sub. (4) (a) may petition for the designation of a successor
6 guardian for the child to assume the duty and authority of full or limited
7 guardianship in the event of the death, ^(s)incapacity, ~~resignation, or removal by the~~
8 ~~court~~ of the initially appointed guardian. If the petition for the designation of a
9 successor guardian is brought after the original appointment of a guardian, the
10 petition shall be heard in the same manner and subject to the same requirements as
11 provided under this section for an original appointment of a guardian. If the child's
12 permanency plan calls for the potential placement of the child in the home of a
13 successor guardian and the provision of monthly subsidized guardianship payments
14 to the successor guardian, the petitioner shall include in the petition a statement
15 that the conditions specified in s. 48.623 (6) (bm) have been met and a request for the
16 court to include in the court's findings a finding confirming that those conditions
17 have been met.

18 2. After hearing, the court may designate a successor guardian whose
19 appointment shall become effective as provided in par. (b). If the petition under subd.
20 1. includes a request for the court to include in the court's findings a finding
21 confirming that the conditions specified in s. 48.623 (6) (bm) have been met, the court
22 shall include that finding in the court's findings. The successor guardian shall
23 receive a copy of the initial guardianship order, any court order revising that initial
24 order, and the order designating the successor guardian. Upon the death, ^(s)incapacity,
25 ~~resignation, or removal by the court~~ of the initially appointed guardian, a person

1 authorized to file a petition under sub. (4) (a) may file a petition under par. (b) for the
2 appointment of the successor guardian designated under this subdivision to assume
3 the duty and authority of guardianship.

4 (b) *Appointment.* 1. If a guardian dies, becomes incapacitated, ^(or) ~~is removed by~~
5 ~~order of the court, or resigns and the resignation is accepted by the court,~~ <sup>leave
P COMMS</sup> any person
6 authorized to file a petition under sub. (4) (a) may petition for the appointment of a
7 person designated under par. (a) 2. or any other competent and suitable person as
8 successor guardian to assume the duty and authority of guardian. The petition shall
9 be heard in the same manner and subject to the same requirements as provided
10 under this section for an original appointment of a guardian. If the child's
11 permanency plan calls for the potential placement of the child in the home of a
12 successor guardian and the provision of monthly subsidized guardianship payments
13 to the successor guardian, the petitioner shall include in the petition a statement
14 that the conditions specified in s. 48.623 (6) (bm) have been met and a request for the
15 court to include in the court's findings a finding confirming that those conditions
16 have been met.

17 2. After hearing, the court may appoint the person designated under par. (a)
18 2. or any other competent and suitable person as successor guardian to assume the
19 duty and authority of guardianship. If the petition under subd. 1. includes a request
20 for the court to include in the court's findings a finding confirming that the conditions
21 specified in s. 48.623 (6) (bm) have been met, the court shall include that finding in
22 the court's findings. The powers and duties of the successor guardian shall be the
23 same as those of the initially appointed guardian. The successor guardian shall
24 receive a copy of the initial guardianship order, any court order revising that initial
25 order, and the order appointing the successor guardian.

Ankoref

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SECTION 20. Nonstatutory provisions.

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

SECTION 21. Effective dates. This act takes effect on the first day of the 4th month beginning after publication, except as follows:

(1) EMERGENCY RULES GOVERNING SUBSIDIZED GUARDIANSHIP PAYMENTS TO SUCCESSOR GUARDIANS. SECTION 20 of this act takes effect on the day after publication.

(END)

Ankoref

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2107/P2dn
GMM.....

emw

— Date —

the creation of s. 48.977 (SM)
from the draft

Kimber:

This redraft incorporates DCF's recommended edits except as follows:

1. The redraft does not insert "successor" before "guardianship" at page 5, line 14 because legally there is no difference between the duty and authority of guardianship and the duty and authority of successor guardianship. Once the successor guardian is appointed as guardian, he or she is the full guardian of the child just as if he or she had been appointed as the original guardian.

2. The redraft does not remove ~~Section 19~~ in its entirety. If you read the ~~Section~~ carefully, you will see that it does not create any additional judicial procedures. Indeed, the ~~Section~~ expressly states that "the petition shall be heard *in the same manner and subject to the same requirements* as provided for the original appointment of a guardian." Rather, the new ~~Section~~ provides a road map so that the procedure is not left to guesswork. For precedent, see s. 54.54, which similarly provides that a petition for the appointment of a guardian under ch. 54 shall be heard in the same manner and subject to the same requirements as provided for an original appointment of a guardian. ~~Section 19~~ accomplishes the same thing in s. 48.977.

In addition, the redraft accomplishes a couple of other DCF edits, but not in the manner proposed by DCF. Specifically:

1. The redraft requires a person to undergo a background check prior to being named as a potential successor guardian not by amending s. 48.623 (2) but rather by amending s. 48.623 (6) (bm), which is cross-referenced in s. 48.623 (2).

2. The redraft prohibits ongoing background checks on a successor guardian by amending the definition of "caregiver" to limit that definition to a person who is seeking, not receiving, subsidized guardianship payments, amending the definition of "entity" to limit that definition to a person who is proposed to be named as a successor guardian, and amending s. 48.685 (3) (a) to narrow the cross-reference to s. 48.623 (6) so as to limit the ongoing background checks to interim caretakers, not successor guardians.

Gordon M. Malaise
Senior Legislative Attorney
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s. 48.977 (SM)
s. 48.977 (SM)

s. 48.977 (SM)

Insert 6-6

Section #. 48.685 (1) (ag) 1. b. of the statutes is amended to read:

✓
(am)

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

History: 1997 a. 27, 237, 281; 1999 a. 9, 32, 56, 185, 186; 2001 a. 109; 2003 a. 321; 2005 a. 149, 184, 277; 2007 a. 20 ss. 1346 to 1358, 9121 (6) (a); 2007 a. 97, 111, 116, 130, 153; 2009 a. 28, 76, 94, 185; 2011 a. 32, 35, 87, 258; 2013 a. 20, 165, 170, 334.

, or who is seeking payment under s. 48.623 (6) (bm)
for operating an entity

credit

Insert 8-8

Section #. 48.685 (3) (a) of the statutes is amended to read:

(am)

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

History: 1997 a. 27, 237, 281; 1999 a. 9, 32, 56, 185, 186; 2001 a. 109; 2003 a. 321; 2005 a. 149, 184, 277; 2007 a. 20 ss. 1346 to 1358, 9121 (6) (a); 2007 a. 97, 111, 116, 130, 153; 2009 a. 28, 76, 94, 185; 2011 a. 32, 35, 87, 258; 2013 a. 20, 165, 170, 334.

Insert

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2107/P2dn
GMM:emw

May 19, 2015

Kimber:

This redraft incorporates DCF's recommended edits except as follows:

1. The redraft does not insert "successor" before "guardianship" at page 5, line 14 because legally there is no difference between the duty and authority of guardianship and the duty and authority of successor guardianship. Once the successor guardian is appointed as guardian, he or she is the full guardian of the child just as if he or she had been appointed as the original guardian.
2. The redraft does not remove the creation of s. 48.977 (5m) from the draft. If you read s. 48.977 (5m) carefully, you will see that it does not create any additional judicial procedures. Indeed, s. 48.977 (5m) expressly states that "the petition shall be heard *in the same manner and subject to the same requirements* as provided for the original appointment of a guardian." Rather, s. 48.977 (5m) provides a road map so that the procedure is not left to guesswork. For precedent, see s. 54.54, which similarly provides that a petition for the appointment of a guardian under ch. 54 shall be heard in the same manner and subject to the same requirements as provided for an original appointment of a guardian. Section 48.977 (5m) accomplishes the same thing in s. 48.977.

In addition, the redraft accomplishes a couple of other DCF edits, but not in the manner proposed by DCF. Specifically:

1. The redraft requires a person to undergo a background check prior to being named as a potential successor guardian not by amending s. 48.623 (2) but rather by amending s. 48.623 (6) (bm), which is cross-referenced in s. 48.623 (2).
2. The redraft prohibits ongoing background checks on a successor guardian by amending the definition of "caregiver" to limit that definition to a person who is seeking, not receiving, subsidized guardianship payments, amending the definition of "entity" to limit that definition to a person who is proposed to be named as a successor guardian, and amending s. 48.685 (3) (a) to narrow the cross-reference to s. 48.623 (6) so as to limit the ongoing background checks to interim caretakers, not successor guardians.

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Malaise, Gordon

From: Liedl, Kimberly - DCF <Kimberly.Liedl@wisconsin.gov>
Sent: Tuesday, June 02, 2015 9:08 AM
To: Malaise, Gordon
Subject: Edits: LRB -2107/P2 Topic: Designation of successor guardian eligible for subsidized guardianship payments

Hi, Gordon, here are DCF's revisions on 2107/P2. This will hopefully be the final round of edits from us.

Please let me know if you have any questions.

Thanks,
Kimber

1. Section 10 and 11, p. 7, lines 5 and 20. : The following technical correction should be made: the reference to 48.623(6)(bm)4. should be to (bm)5.

2. Section 21, p. 10 -11: Delete 48.977(5m)(a) on the grounds that there is no need to have a court designation step prior to the court appointment step for a successor guardian. This proposed change is consistent with the federal law which does not require the court to designate the successor guardian before a later appointment; it only requires that the successor guardian be named in a subsidized guardianship or amended subsidized guardianship agreement.

3. Section 21, p. 12, lines 2-4. in 48.977(5m)(b) there is no need for the clause requiring that the "child's permanency plan calls for the potential placement of the child in the home of a successor guardian..." A suggested modification is:

...~~If the child's permanency plan calls for the potential placement of the child in the home of a successor guardian and the provision of monthly subsidized guardianship payments to the successor guardian~~ the successor guardian enters into a subsidized guardianship agreement under 48.623(2) with the county department or department, the petitioner shall include in the petition a statement that the conditions specified in s. 48.623 (6) (bm) have been met and a request for the court to include in the court's findings a finding confirming that those conditions have been met.

4. Section 21, p. 12 lines 14-15 delete "The powers and duties of the successor guardian shall be the same as those of the initially appointed guardian." Regardless of whether the previous guardian had a full or limited guardianship, there may be a good reason to change the type of guardianship (i.e., full or limited) for the successor guardian.

Kimberly Liedl

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